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## FELICITATIONS TO HIS EMINENCE, JAMES FRANCIS CARDINAL McINTYRE

THE JURIST rejoices in the privilege of joining its voice to the great chorus of acclamation that has risen from the throats of priests and people throughout the United States in praise of their fellow citizen whom our Holy Father has elevated to the rank of the Cardinalate.

The bond of loyalty to the Holy See thus so munificently rewarded by our Holy Father in conferring this treasured dignity upon another Archbishop of our great country embraces the editors and the readers of THE JURIST within its unifying sweep and elicits from them an assuring pledge that both in continuously honoring Cardinal McIntyre and in emulating his spirit of devotion to the Holy See they will show themselves grateful for the recognition graciously extended to the Church in our country through the latest favor conferred on it by the Holy See.

The plaudits with which we unstintedly express our esteem for the merit which caught the eye of our Holy Father contain at once a happy outpouring of gratitude for the blessings bestowed on us through the superbly capable prelates that grace our hierarchy and a ready profession of the esteem that guarantees our heartiest cooperation with their projects conceived in the interest of Holy Mother Church. Thus we delight in the signal opportunity of comforting our own souls while we gladden the hearts of those whom the Holy Father has appointed to rule us as members of the Church of God. Can we ever offer sufficient return for this opportunity unless it be through our prayers for the Cardinal whose elevation afforded it and for the Vicar of Christ whose generous care of us gave us another Prince to share his counsels in governing the Kingdom of God on earth!

# THE CONFESSOR IN COURT*

"REGARDING the sins revealed to him in sacramental confession, the priest is bound to inviolable secrecy. From this obligation he cannot be excused either to save his own life or good name, to save the life of another, to further the ends of human justice, or to avert any public calamity." [1]

This obligation of the positive divine law has bound the priest of the Catholic Church from the very foundation of the Church and the institution of the Sacrament of Penance. It has been inevitable that there should be occasions when this precept should come into conflict with the desire of officials administering "human justice". For instance, a man suspected of murder, has gone to confession. Did he pour into the priest's ear a tale of homicidal guilt? What better proof could the prosecutor obtain? Will a court of law require the priest to disclose what was thus told him in sacramental secrecy? This article will be devoted to a discussion of how the problem has been met in American law, with a brief introduction in respect to its treatment under the common law of England.

American and English law recognizes certain categories of confidential relations, the parties to which cannot be com-

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[1] 11 *Catholic Encyclopedia* 629, Article "Penance", Subtitle, "Seal of Confession".

pelled to testify in court as to communications made in pursuance of such relations. Communications, thus protected, are said to be privileged. Common law jurisdictions are not agreed as to the number of relations entitled to this prerogative.

The most widely acknowledged of these relations is probably that of husband and wife. Almost universally common law courts, even in the absence of statute, have held that neither spouse may disclose in court communications made by the other. There are a few exceptions to this rule, for instance where the communication is in respect to an attempt by one spouse to inflict injury on the other.

The relation of attorney and client has been favored at common law almost to the same extent as that of husband and wife. The English courts, in the absence of statute, have evolved the rule that communications in this relation may not be disclosed, and this has been followed in probably all American jurisdictions.

There has been a persistent demand that communications between physician and patient should be privileged. The English courts have refused to concede privilege here. American courts have been somewhat more generous, but generally hold that the physician and patient relation confers no privilege in the absence of statute. Statutes conferring privilege here have been enacted in many American states.

The expressions "minister of religion and penitent" or "clergyman and penitent" are employed generally in present day parlance to describe the relation which would be that of priest and penitent in Catholic practice. The extent to which privilege is respected here is the subject of this article.

There are some other relations in which the privilege has been either claimed, or extended, but the above are its principal manifestations, and it would be impractical to discuss them all.[2]

[2] In general, the common law does not permit the introduction of evidence as to statements made to the witness by others, out of court, for the purpose of establishing the truth of the matters thus stated. There are numerous

*The privilege in English Law*

Legal historians disagree whether the seal of confession was respected by the English courts prior to Henry VIII. We might suppose that a legal system, the personnel of which was solidly Catholic, would hesitate to condemn a priest for refusing to commit a sacrilegious violation of his ministerial obligation. But there is no conclusive historical evidence on either side. A frequently cited statute of Edward II which regulated the right of offenders to seek sanctuary in churches, mentions incidentally that if thieves and their accomplices confess to a priest, the priest may not inform on them.[3] This indicates statutory recognition of the privilege but it appears to be the only documentary reference for that period.

The earliest surviving reference to the problem in the courts is in the records of the celebrated Gunpowder Plot trials. Father Henry Garnet, a Jesuit priest, was one of those on trial. The charge against him was that, having knowledge of the plot, he failed to inform the authorities. He defended on the ground that any knowledge he might have had could have come only from having heard the confessions of the conspirators. Lord Coke, the prosecutor, did not deny Father Garnet's contention that such matters were privileged. He argued that the confession was not in fact sacramental, and added: "Howsoever it were, it being crimen laesae majestatis (high treason) he ought to disclose it."[4] The reports of the

exceptions to this "hearsay rule", however, particularly in respect to statements "against interest" in civil cases, and "confessions" and "admissions" in criminal cases. A "confession" is a full acknowledgment of criminal guilt, while an "admission" concedes circumstances pointing to guilt, but falling short of full acknowledgment. It is probable that most cases involving claim to privilege in respect to the clergyman and penitent relation will fall under one or another of these three exceptions to the hearsay rule.

[3] Statute of 9 Edward II, c. 10. The Latin text in respect to confession is as follows: "Placet etiam Domino Regi, ut latrones, vel appelatores, quandocunque voluerint, possint sacerdotibus sua facinora confiteri, sed caveant confessores, ne erronice hujusmodi appelatores informent."

[4] Volume 2, State Trials.

trial are not clear as to what action was taken by the court on this claim of privilege. The prosecution had introduced evidence of alleged knowledge from other sources as well. Father Garnet was found guilty and executed. It is significant, however, that legal existence of the privilege was not outspokenly denied. Lord Coke's remarks have been construed by some as indicating recognition of a previous rule holding sacred the Seal of Confession, with a possible claimed exception for high treason.

Since that time the question has arisen in English courts in respect to both sacramental confession in the Catholic Church and disclosures made to Protestant ministers. The cases, however, are not numerous.

In one case at least a priest was jailed for refusal to answer in the witness box.[5] An accused was on trial for theft of a watch, which had been recovered by a Catholic priest. The priest was asked in court from whom he had received the watch. His reply was that: " I received it in connection with the confessional." The Court replied: " You are not asked at present to disclose anything stated to you in the confessional; you are asked a single fact—from whom did you receive the watch you gave to the policeman."

On the priest's refusal to answer further he was sentenced to jail for contempt.

It will be noted that the judge was scrupulous to point out that he was not seeking a disclosure of any statement made in the confessional, even though the answer demanded might have pointed out the culprit with equal effectiveness.

In a divorce case [6] the court required a Protestant minister to disclose statements respecting marital misconduct made to him by one of the spouses. The judge said that: " It was not to be supposed for a single moment that a clergyman had any right to withhold information from the courts of law."

[5] *Regina* v. *Hay*, 2 F. & F. 4, 175, English Reports 933 (1860).

[6] *Normanshaw* v. *Normanshaw*, 69 Law Times 468 (1893).

In another case, while discussing the reasons for denying privilege as between physician and patient, an English judge stated that: "Communications made to a priest in the confessional on matters perhaps considered by the penitent to be more important than his life or his fortune, are not protected." [7]

In another case where likewise an ineffectual effort was made to claim privilege for the physician-patient relation,[8] the judge was slightly more temperate and said: "I, for one, will never compel a clergyman to disclose communications made to him; but if he chooses to disclose them, I shall receive them in evidence."

In at least one case a Criminal Court squarely upheld the privilege,[9] refusing to compel a jail chaplain to testify as to statements made to him by the prisoner who had sought his spiritual ministration. The judge said: "I think these conversations ought not be given in evidence. The principle upon which an attorney is prevented from divulging what passes with his client . . . applies to a person, deprived of whose advice, the prisoner would not have proper spiritual assistance. I do not lay this claim as an absolute rule; but I think such evidence ought not be given."

The above are all the reported English cases on the subject.[10] They are conflicting and even where the privilege is squarely denied there are indications of mental disquietude on the part of the judge. Professor Wigmore sums up as follows: "But since the 'Restoration' and for more than two centuries of English practice, the almost unanimous opinion of judicial opinion (including at least two decisive rulings) has denied the existence of the privilege. A single judge, to be sure, distinctly declared for the privilege, and several took oc-

[7] *Wheeler* v. *Le Marchant*, 17 Chancery Division 675, 44 Law Times 632 (1881).

[8] *Broad* v. *Pitt*, 3 C. & P. 518, 172 English Reports 528 (1828).

[9] *Rex* v. *Griffin*, 6 Cox Criminal Cases 219 (Central Criminal Court, 1853).

[10] 22 *English and Empire Digest* 419.

casion to avow that in their discretion they would not compel disclosure in practice. But the privilege cannot be said to have been recognized as a rule of the common law in England." [11]

In an authoritative work on English law it is stated: "Confidential communications, other than those passing between a client and his legal advisers, are not privileged from disclosure." [12]

However, in view of the actual language of the decided cases, it would seem that one D. M. Cloud, writing on the subject at the turn of the century, has phrased it more accurately. He said: "In England, at common law, the question remained ever in a nebulous state; it being decided at one time that such communications were privileged, at another that they were not so, and again a middle ground being adopted, it was said that, though they were acceptable as evidence if purely voluntary, yet they were highly improper if coercion were employed . . . the question never received precise adjudication in England." [13]

*Common law holdings in the United States*

In the absence of statute the contention of privilege for the clergyman-penitent relation has not been well received in the United States.

It is rather odd that two earliest reported cases were decided in New York, and were conflicting. De Witt Clinton, Mayor of New York City, had occasion to rule on it in a case coming before his Mayor's Court.[14] The incomplete record indicates that he chose to cut through the cords of legal technicality and treat the matter as one of first instance, it being said that: "On an objection raised by the prisoner's counsel

[11] Wigmore on *Evidence*, edition of 1940, Section 2394.

[12] 13 Halsbury's *Law of England* 726.

[13] 33 *American Law Review* 544, (July-August 1899 issue).

[14] *People* v. *Phillips*, Court of Sessions, New York (1813) (from marginal note in *Smith's Case* hereinafter cited).

to this evidence, it was decided by his honor, De Witt Clinton, then Mayor of New York, that although confessions made to a Roman Catholic priest were received in England, and no privilege could be claimed by a priest of that order in the English courts, yet his honor considered that in this country we were at liberty to establish a different rule. His honor decided in favor of the privilege claimed, and that the testimony of Mr. Coleman [the priest] could not be required."

*Smith's Case,* a few years later, involved the privilege in respect to a Protestant minister. There the record revealed that the accused in a murder case had been visited in his jail cell by a minister and made certain admissions in respect to the homicide. The Court denied the privilege, acknowledging, but distinguishing, the *Phillips Case* as follows: "His honor thereupon decided that the testimony was admissible, and took a distinction between auricular confessions made to a priest in the course of discipline, according to the canons of the church, and those made to a minister of the gospel in confidence merely as a friend or advisor." [15]

It will be noted that *Smith's Case* did not deny the privilege, but rather "distinguished" on the ground that only sacramental confession was entitled thereto. New York has since adopted a statute on the subject, the language of which does not resolve the difficulty. It will be noted hereinafter that this problem has recently come again to the fore in decisions from other States.

In a Massachusetts case [16] it developed that the accused had confessed acts of lewdness before members of a church congregation. It was held that there was no privilege. The brief opinion contained no discussion beyond the bare announcement of denial. There had been a statement on the part of the prosecutor however, to the effect that: "But the confession in this case was not to the church, nor required by any known ecclesiastical rule. It was made to his friends and neighbors."

[15] *Smith's Case,* 2 New York City Hall Reports 77 (1817).

[16] *Commonwealth* v. *Drake,* 15 Massachusetts 161 (1818).

This is reminiscent of the distinction made in the *Smith's Case.*

In New Jersey the privilege was twice denied before the State's legislature established it by statute. The first case was an action of slander against a Catholic priest.[17] The court held that a witness might be permitted to testify as to matters told her by the defendant priest in confession. The court merely remarked: "We have not been directed to any statute or decision in New Jersey that excludes this evidence."

A few years later, in a criminal case, it was held that statements made by the accused to a Salvation Army Major were not privileged. The Court again was very brief on the point, saying: "No privilege of this nature existed at common law . . . there is no statute in New Jersey bestowing such a privilege." [18]

The Supreme Court of Mississippi recently approved the action of a trial court in a criminal case in receiving evidence of statements made by the accused to a minister. The clergyman-penitent relation was not specifically mentioned, the case having been decided on other points of the law of evidence.[19]

Pennsylvania does not have such a statute, and there does not appear to be any decision on the question in its courts of last resort. In an Orphans Court case, however, the question arose if a Protestant minister might be permitted to testify as to his efforts to reconcile an estranged husband and wife. The Court said on the point: "His [the minister's] testimony was objected to as a confidential communication. We overrule this objection, because we do not deem it to be confidential within the meaning of the law. The statements were not penitential in character and were not made to Dr. Rudisill in his professional character while seeking spiritual advice." [20]

[17] *Bahrey* v. *Poneatishin,* 112 Atlantic 481 (1921).

[18] *State* v. *Morehaus,* 117 A. 296 (1922).

[19] *Barnes* v. *State,* 23 Southern 2nd 405 (1945).

[20] *Re Schaeffer's Estate,* 52 Dauphin County Reports 45 (1941).

There is no Federal statute on the question, nor any decisions squarely on the issue. It was mentioned, however, and very favorably, by way of dictum by Mr. Justice Fields of the United States Supreme Court.[21] The case involved an appeal from a disallowance by the Court of Claims of a claim for compensation for the deceased, who had served as a spy behind the Confederate lines during the Civil War. Objection was made to the introduction of evidence as to the nature of the deceased's contract with the Federal Government on the ground that it was of a highly confidential nature. In sustaining this objection, Mr. Justice Field stated, [emphasis added]: "It may be stated as a general principle that public policy forbids the maintenance of any suit in a court of justice, the trial of which would inevitably lead to the disclosure of matters which the law itself regards as confidential, and respecting which it will not allow the confidence to be violated. On this principle, suits cannot be maintained which require *a disclosure of the confidences of the confessional,* or those between husband and wife, or of a communication by a client to his counsel for professional advice, or of a patient to his physician for a similar purpose. Much greater reason exists for the application of the principle to cases of contract for secret services with the government, as the existence of a contract of this kind is itself a fact not to be disclosed."

*Possible applicability of First Amendment*

For a Catholic priest the secrecy of the confessional is prescribed by Canon Law.[22] The Sacrament of Penance involves a rite of the Church. Any effort to compel its violation would appear to be a prohibition against that free exercise of religion which is guaranteed in the First Amendment. Since the Supreme Court of the United States has held the First

[21] *Totten, Administrator* v. *United States,* 92 U. S. 105, 23 L. Ed. 605 (1876).

[22] Canon 889. This canon itself is a restatement of the divine positive law.

Amendment equally applicable to the States,[23] it would appear that any effort to make a priest violate the Seal of Confession might well be held to be a violation of constitutional rights, whether sought in a Federal or a State Court.

*Statutes establishing privilege*

Statutes are now in effect in at least thirty states and two territories establishing the privilege for the clergyman-penitent relation. While there is no Federal statute on this point, the privilege is respected in the court martial procedure of the United States Armed Forces. Extracts from these statutes are attached as an appendix to this article.

The statutes differ somewhat in detail. In substance most of them provide that no minister of the gospel or priest shall be permitted to disclose any confessions made to him in his professional character in the course of discipline enjoined by the rules and practices of his denomination. In some States there are separate statutory provisions pertaining to civil and criminal procedure.

The expression "course of discipline", or something quite similar, appears in the statutes of at least twenty-three jurisdictions.[24] The use of this expression may have considerable significance as we shall see in discussing decisions construing these statutes.

Nevada and New Mexico require only that the confession be made to the clergyman "in his professional character". This seems to be somewhat more liberal than the language used elsewhere. Louisiana requires only that there be a

[23] *Murdock* v. *Pennsylvania*, 319 U. S. 105, 63 S. Ct. 870.
*Everson* v. *Board of Education*, 330 U. S. 1, 67 S. Ct. 504.
The relevant text of the First Amendment is as follows: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof".

[24] Alaska, Arizona, Arkansas, California, Colorado, Idaho, Indiana, Kansas, Kentucky, Michigan, Minnesota, Missouri, Montana, Nebraska, New Jersey, New York, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Utah and West Virginia. See Appendix.

" communication made to him in confidence by one seeking his spiritual advice or consolation ". The Vermont statute is unique in protecting statements made to the clergyman " under the sanctity of a religious confessional ". The Armed Forces draftsmen cut wide from existing statutory precedents and chose to protect communications made to a chaplain or clergyman " either as a formal act of religion or concerning a matter of conscience ".

Most of the statutes, twenty-four in all, designate the disclosures entitled to protection as " confessions ".[25] Indiana uses the expression " confessions or admissions "; Iowa, " any confidential communication "; Louisiana, " any communication "; Vermont, " statements "; the Armed Forces, " communications ". In Nebraska the statute dealing with criminal procedure uses the term " confessions ", while the civil law statute refers to " any confidential communication ".

There do not appear to be any decisions as to the scope of the statute in respect to the term employed in describing the communications protected. It is open to question if the word " confession " is employed in its rather narrow legal meaning or in its broader popular meaning. In criminal law the word has a very specific meaning, particularly in reference to the term " admission ". It has been said that: " A confession is an acknowledgment of guilt, whereas an admission is a self-incriminatory statement falling short of an acknowledgment of guilt." [26]

The term " admission " also has a specific meaning in civil practice where it has been defined as: " a statement of a party inconsistent with his claim in an action and amounting therefore to proof against him." [27]

[25] Alaska, Hawaii, Arizona, Arkansas, California, Colorado, Idaho, Kansas, Kentucky, Michigan, Minnesota, Missouri, Montana, Nebraska (Nebraska for criminal law only), Nevada, New Jersey, New Mexico, New York, North Dakota, Ohio, Oregon, South Dakota, Utah, and West Virginia. See Appendix.

[26] *Manual for Courts Martial, United States*, 1951, paragraph 140a, page 248.

[27] 20 *American Jurisprudence* 460.

It is possible the point might be raised in an appropriate case that the term " confession " must be construed within its legal meaning and does not apply to statements falling in other categories. Such a claim would set at nought the social purpose of the statute, but its advocacy is a possibility in practice.

*Decisions construing the privilege statutes*

There have been quite a few decisions construing statutes conferring the clergyman-penitent privilege.

First of all, it is well established that mere casual conversation with a priest or minister is not sufficient to confer the privilege. The communication must be under circumstances calling forth the elements specified in the statute.[28]

It has been held that statements made to a minister by one of his parishioners in discussing an automobile accident were not privileged, even though the minister was visiting her in that capacity while she was hospitalized for injuries suffered in the accident.[29]

When the minister acted as interpreter for one unable to speak English, and not in his capacity of minister, it was held that statements made were not privileged.[30] The same holding was arrived at in a case where a priest, who was also a notary public had been acting in his capacity as notary.[31]

Where the defendant, who had been handling business affairs for the church, made certain statements in the presence of the minister and some other members of the congregation in respect to such business affairs, it was held statements were not privileged.[32]

[28] *Gilhooley* v. *State*, 58 Indiana 182 (1877); *State* v. *Brown*, 64 N. W. 277 (Iowa, 1895); *State* v. *Morgan*, 95 S. W. 402 (Missouri, 1906).

[29] *Christensen* v. *Pesterious*, 250 N. W. 363 (Minnesota, 1933).

[30] *Blossi* v. *Chicago & N. W. Ry.*, 123 N. W. 360 (Iowa, 1909).

[31] *Partridge* v. *Partridge*, 119 S. W. 415 (Missouri, 1909).

[32] *People* v. *Gates*, 13 Wendall (New York) 311 (1833).
*Milburn* v. *Haworth*, 108 P. 155 (Colorado, 1910).

It was held that a minister was competent to express an opinion as to the mental state of a deceased parishioner to whom he had ministered spiritually for several years prior to death.[33] In somewhat the same vein, it was held that a priest might testify concerning statements made to him by a deceased parishioner as to where his last will and testament might be located.[34]

In a prosecution for bigamy a minister was called on to testify to a conversation had with the accused in jail, the object of accused being "to have the rector entercede with his first wife for a settlement of the criminal proceedings". In holding admissible statements made during the interview, the Court said: "To render a communication to a minister of the Gospel or priest privileged it must have been received in confidence. By this we do not mean that it must be made under the express promise of secrecy, but rather that the communication was in confidence, and with the understanding, express or implied that it should not be revealed to any one. The mere fact that a communication is made to a person who is a lawyer, a doctor or a priest does not of itself make such communication privileged. . . ." [35]

This case is reminiscent of *Re Schaeffer's Estate* where a Pennsylvania Orphans Court [36] held that privilege did not apply in respect to statements made to a minister in an effort to obtain a reconciliation between estranged spouses.

These cases are of interest because the priest or minister is often called on to use his good offices to reconcile estranged spouses. To a large extent, however, such transactions involve the carrying of messages from one spouse to the other. Such communications are not for the clergyman's ear alone,

[33] *Estate of Toomes*, 54 California 509 (1880); *Bruck* v. *Kruckeberg*, 95 N. E. 2d 304, 22 ALR 2nd 1145 (Indiana, 1952).

[34] *In re Koellen's Estate*, 176 P. 2d 544 (Kansas, 1947).

[35] *Hills* v. *State*, 61 Neb. 589, 85 N. W. 836, 57 LRA 155 (Nebraska, 1901).

[36] Dauphin County Reports 45 (1941) (discussed in prior section in connection with other matters).

hence the element of confidential relation may be absent. It is possible that communications might be made during the course of interviews for this purpose which might be truly confidential and penitential in the purview of the statute. Evidently the communications made in the *Hills* and *Schaeffer* case were not of this nature.

The case of *Knight* v. *Lee*[37] was an action for slander because of remarks made by the defendant to a clergyman concerning the reputation of the plaintiff. The clergyman had been investigating plaintiff's character in respect to church membership. It was held that the communication was not privileged. The Court said: ". . . the information imparted by the defendant to Bryant on that occasion can not be held to have been, in any sense, a confession within the meaning of the act referred to. The confessions, concerning which clergymen are incompetent to testify, are evidently such as are penitential in their character, or are made to clergymen in obedience to some supposed religious duty or obligation, and do not embrace communications to clergymen, however confidential, when not made in connection with or in discharge of some such supposed religious duty of obligation, or when made to them while in the discharge of duties other than those which pertain to the office of clergyman."

In this case it appears that while the statement was probably made to the clergyman in his profession as such, and was intended to be confidential, it was not actually a "confession" in any sense of the word, and the person making it was not a "penitent".

Only statements *made by the penitent to the clergyman* can be the subject of privilege. A statement made by him to someone other than the clergyman involved is not privileged, even though induced by the advice of the clergyman given in a confidential interview. Thus privilege was denied in respect to a statement *made to the police* by a person accused of crime, such statement to the police having been urged by a

[37] 80 Indiana 201 (1881).

clergyman to whom the accused had gone for spiritual advice.[38]

*Construction of expression "course of discipline"*

There are indications that some courts may take a very strict view as to what constitutes a "course of discipline", this expression being used in most statutes.

The case of *Alford* v. *Johnson*[39] involved a will contest case. A Protestant minister testified that the testator had spoken to him about his adulterous relations with a woman alleged to have exercised undue influence on the testator so as to cause him to make his will in the form offered for probate. Testator was not a member of the minister's church, but "spoke penitently of his conduct and of a desire to join his church". The minister would not receive him into the church as long as he persisted in maintaining the adulterous relation. It was held that this testimony was not privileged. The Court said: "Before the statements or confessions made to a minister of the gospel or priest of any denomination can be held inadmissible it must appear from the evidence that they were made to such minister or priest in his professional character, and because enjoined by the rules of discipline or practice of such religious denomination. . . . It does not appear from the testimony adduced in this case that the statements made by Stroope to Warlick were made to him in any professional relation to Stroope as a clergyman, nor was there any testimony that such statements were made in the course of discipline enjoined by any rules of practice of the religious denomination of which Warlick [the minister] was a member. These communications were made to Warlick in like manner as to any individual; and while it is true that Stroope also spoke to him relative to his desire to become a member of his church, the communications were not made to Warlick in his professional character or by reason of any rule of practice of that church."

[38] *Mitsunaya* v. *People*, 129 P. 241 (Colorado, 1913).

[39] 146 S. W. 516 (Arkansas, 1912).

The testator had spoken to the clergyman "penitently" with a religious object in view. It is difficult to agree with the Court that he did not speak to the minister in the latter's "professional" character. However, even if the Court had not hesitated at the element of "professional" character, it still had the other ground to fall back to, that the statements were not made "in the course of discipline enjoined by any rules of practice of the religious denomination of which Warlick was a member". If a denomination has no "course of discipline" for the confession of sins or faults it would appear very much that, under this precedent, privilege could not apply.

Some years later the Supreme Court of Arkansas took occasion to restate this rule in even stronger language when it said that the statute of that State should be "construed to exclude only confessions which have been made to a minister which are enjoined by the rules or practices of the denomination. . . . The mere fact that the confession is made to a minister of the gospel, or a priest, and made to him as such, and even made to him to obtain his help or assistance, is not sufficient to exclude the confession, but it must be made pursuant to a duty enjoined by the rules or practice of that particular church. There is no evidence in this case that there is any discipline or rule or practice of the church to which appellant and his pastor belonged which enjoins upon its members the duty to make a confession of sins." [40]

The Court of Appeals of Kentucky held that a minister of the Methodist Church must testify as to the accused making a statement: "I lost my temper and killed him", while the minister was visiting him in jail for the purpose of spiritual ministration. Said the Court: "There is nothing in the record tending to indicate that the communication to the witness [the minister] was penitential in its character or that it was made to him 'in his professional character, in the course of discipline enjoined' by the rules and practice of his de-

[40] *Sherman* v. *State*, 279 S. W. 353 (Arkansas, 1926).

nomination. . . . There is nothing to indicate that appellant belonged to the Methodist Church . . . or that he made the statement in question because of some supposed duty." [41]

It will be recalled that early in the nineteenth century a New York court took this strict view.[42] The rule in *Smith's Case* and the holdings of the Arkansas and Kentucky courts would have the effect of preventing the application of the privilege except in a denomination having a clearly defined discipline for the confession of sins, such as the Catholic Church. And even in the Catholic Church there would be question as to any statement made to the priest outside the Sacrament itself. It would appear that these cases would restrict the privilege to its ancient function of protecting only the "Seal of Confession". In general, the statutes seem to contemplate a wider social construction, due, no doubt, to the diversity of religious belief in the United States. The Arkansas and Kentucky courts construe their statutes much as the Statute of Edward II might have been construed in that monarch's day.

In the case of *Reutkemer* v. *Nolte*,[43] the Supreme Court of Iowa held that statements by a girl who was a Presbyterian to a Presbyterian minister and three "ruling elders" were privileged. It appeared that sessions of this kind were held in conformity with the practice of the church when a member wished to atone for a fault. Hence the court held that communications made in connection therewith were within the "practice or discipline" of the church, as contemplated by the statute.

*Broader view*

The Supreme Court of Minnesota has taken a broader view on the question. The case of *In re Swenson* was an action to

[41] *Johnson* v. *Commonwealth*, 221 S. W. 2nd 87 (Kentucky).

[42] *Smith's Case*, 2 New York City Hall Reports 77 (1817) (for discussion in respect to the privilege at common law, see prior section).

[43] 161 N. W. 290 (Iowa, 1917).

hold a Lutheran minister in contempt for refusing to answer questions when called as a witness in a divorce case as to statements made to him by one of the parties. The minister claimed the communications were privileged under the statute. In holding the minister had been justified in maintaining silence, the Court said: " If we are to construe this statute as meaning that the only confession that is privileged is the compulsory one under the rules of the particular church, it would be applicable only, if our information is correct, to the priest of the Roman Catholic Church. Certainly the legislature never intended having the protection extend to the clergy of but one church. . . . We are of the opinion that the ' confession ' contemplated by the statute has reference to a penitential acknowledgment to a clergyman of actual or supposed wrong doing while seeking religious or spiritual advice, aid or comfort, and that it applies to a voluntary ' confession ' as well as one made under a mandate of a church." [44]

These decisions indicate the possibility of a wide cleavage of judicial opinion. It is impractical to speculate how those courts will take sides which as yet have not had occasion to pass on this phase of the matter.

*Desirability of the privilege*

It is not intended in this article to enter into a lengthy discussion as to the desirability of extending the privilege in this relation. If the civil courts did respect the privilege prior to Henry VIII it must have been definitely on the basis of Seal of Confession. The widespread statutory acceptance of the privilege in the United States, with its multiplicity of religious denominations, can be attributed only to its recognition on the basis of broad social policy. To a certain extent it emphasizes that Americans are basically a religious people.

Undoubtedly there may be occasions when a zealous prosecuting attorney is irritated because he may not call to the witness stand the clergyman into whose ear he suspects there

[44] *In re Swenson*, 237 N. W. 589 (Minnesota, 1931).

has been poured a tale of criminal guilt. It might seem that the immediate ends of justice would be better accomplished by compelling full disclosure. But the public must feel that there are deeper considerations. The conference between clergyman and offender is something outside those actions constituting the crime itself. Instances will be few—very few—when the State's case is such that disclosure of a penitential confession will be the turning point between conviction and acquittal.

And it must be considered too that the wrongdoer's communication to the clergyman was completely voluntary. There is an innate revulsion against seizing on this praiseworthy act, even of an unworthy man, and using it to penalize him.

Likewise there is an innate feeling that the confidence pervading this relation is one which must not be shattered. The penitent regards the clergyman, be he priest, minister or rabbi, not as a man merely, but as God's representative. Officials, even men professing no religion themselves, will feel that there is something about it not entirely of this world.

Even material good is sometimes served by secrecy in this relation. For instance, it is highly probable that the owner of the watch in *Regina* v. *Hay* would not have gotten his property back if the thief had not known that the secret of his identity was safe with the priest to whom he surrendered it.

On this point of the utilitarian aspect, as distinguished from basic juridical principle, the following statement by Jeremy Bentham is of interest: "The advantage gained by coercion, gained in the shape of assistance to justice, would be casual, and even rare; the mischief produced by it, constant and all extensive . . . the advantages of a temporal nature, which, in the countries in which this religious practice [Confession] is in use, flow from it at present, would in a great degree be lost; the loss of them would be as extensive as the good effects of the coercion in the character of an aid to justice. To form

any comparative estimate of the bad and good effects flowing from this institution, belongs not, even in a point of view purely temporal, to the design of this work. . . . If in some shapes the revelation of testimony thus obtained would be of use to justice, there are others in which the disclosures thus made are actually of use to justice, under the assurance of their never reaching the ears of the judge. Repentence, and consequent abstinence from future misdeeds of like nature; repentence, followed even by satisfaction in some shape or other, satisfaction more or less adequate for the past; such are the well known consequences of the institution; though in a proportion which, besides being everywhere ascertainable, will in every country and in every age, be variable, according to the degree and quality of the influence exercised over the people by the religious sanction in that form, and the complexion of the moral part of their character in other respects." [45]

*Conclusions*

Privilege has been extended to the clergyman-penitent relation in the majority of American jurisdictions through statute. Its reception as a common law prerogative has been poor. The tendency has been to cite English precedents in denying it a common law existence. On a careful examination of the English decisions it will be seen that they are in the main inconclusive, and that there has always been a trend of English judicial thought in its favor.

American decisions, generally unfavorable in the absence of statute, were rendered without reference to the First Amendment. This Amendment has now become an important factor in all situations involving religion and freedom of conscience. It would appear that denial of the privilege is a prohibition on the free exercise of religion, within the purview of the First Amendment, as to both penitent and confessor.

[45] *Rationale of Judicial Evidence* by Jeremy Bentham, pages 589-590, Volume 4, published by Hunt & Clarke, London, 1827.

A test on this issue would compel re-examination of the problem in the light of vital constitutional concepts.

Decisions construing the scope of the privilege are unanimous in holding that mere communication to a clergyman is not enough. There must be a definite clergyman-penitent relation, and the statements must be penitential in nature and made in confidence for the clergyman's ear alone. Courts have not declared as to the precise nature of communications entitled to privilege. The general trend of decisions would indicate, without specific holdings in that respect, that any statements made under these circumstances are entitled to privilege. There has been no precedent for restricting the term "confession", used in numerous statutes, to its narrow legal meaning of a full acknowledgment of criminal guilt.

On the basis of a relatively small number of decisions we have indications of the possibility for cleavage over construction of the statutory term "course of discipline". Decisions of Arkansas and Kentucky require that there be a confession of sins according to a "course of discipline" or ritual established in the religious denomination. The Supreme Court of Minnesota has repudiated this contention, holding it to be sufficient if there be "a penitential acknowledgment to a clergyman of actual or supposed wrong doing while seeking religious or spiritual advice, aid or comfort".

In the case of *Reutkemer* v. *Nolte*,[46] heretofore cited in respect to another phase of the problem, the Supreme Court of Iowa gave expression to the following as its concept of the policies underlying the statute of that state: "The purpose of the statute is one of large public policy. . . . This statute is based in part upon the idea that the human being does sometimes have need of a place of penitence and confession and spiritual discipline. When any person enters that secret chamber this statute closes the door upon him and civil authority turns away its ear. The privilege of the statute purports to be applicable to every Christian denomination of whatever polity".

[46] 161 N. W. 290 (Iowa, 1917).

## APPENDIX—TEXT OF STATUTES

### State Statutes

*Arizona*

Section 23-103, Arizona Code Annotated, 1939 (Civil Procedure)

" The following persons cannot be witnesses in a civil action: . . .

" 5. A clergyman or priest can not, without the consent of the person making the confession, be examined as to any confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs."

Section 44-2702, supra (Criminal Procedure)

" There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore a person can not be examined as a witness in the following cases: . . .

" 3. A clergyman or priest can not, without the consent of the person making the confession, be examined as to any confession made to him in his professional character in the course of the discipline enjoined by the church to which he belongs."

*Arkansas*

Section 28-606, Arkansas Statutes, 1947

" No minister of the gospel or priest of any denomination shall be compelled to testify in relation to any confession made to him in his professional character, in the course of discipline enjoined by the rules or practices of such denomination."

*California*

Section 1881, Code of Civil Procedure

" There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore a person cannot be examined as a witness in the following cases: . . .

" 3. A clergyman, priest or religious practitioner of an established church can not, without consent of the person making the confession, be examined as to any confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs."

Section 1321, Penal Code

" The rules for determining the competency of witnesses in civil actions are applicable also to criminal actions and proceedings, except as otherwise provided in this code."

*Colorado*

Section 9, Chapter 177, Colorado Statutes Annotated, 1935

" there are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore a person shall not be examined as a witness in the following cases: . . .

" Third—a clergyman or priest shall not, without the consent of the person making the confession, be examined as to any confession made to him in his professional character in the course of discipline enjoined by the church to which be belongs."

*Idaho*

Section 9-203, Idaho Code Annotated, 1948

" There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore a person can not be examined as a witness in the following cases: . . .

" 3. A clergyman or priest can not, without the consent of the person making the confession, be examined as to any confession made to him in his professional character in the course of the discipline enjoined by the church to which he belongs."

*Indiana*

Section 2.1714, Burns Indiana Statutes, 1933, Civil Procedure

" The following persons shall not be competent witnesses: . . .

" Fifth: Clergymen as to confessions or admissions made to them in the course of the discipline enjoined by their respective churches."

Section 9.1602, supra, Criminal Procedure

" The rules of evidence prescribed in civil cases and concerning the competency of witnesses shall govern in criminal cases except as otherwise provided in this Act."

*Iowa*

Section 622.10, Code of Iowa, 1946

"No practicing attorney, counselor, physician, surgeon, or the stenographer, or confidential clerk of any such person, who obtains such information by reason of his employment, minister of the gospel or priest of any denomination shall be allowed, in giving testimony to disclose any confidential communication properly intrusted to him in his professional capacity, and necessary and proper to enable him to discharge the functions of his office according to the usual course of practice or discipline. Such prohibition shall not apply in cases where the party in whose favor the same is made waives the rights conferred."

*Kansas*

Section 60-2805, General Statutes of Kansas, Civil Procedure

"The following persons shall be incompetent to testify:

"Fifth. A clergyman or priest concerning any confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs, without the consent of the person making the confession."

Section 62-1413, supra, Criminal Procedure

"The provisions of law in civil cases relative to compelling the attendance and testimony of witnesses . . . shall extend to criminal cases . . . ."

*Kentucky*

Section 606, Par. 4, Kentucky Civil Code

"No attorney shall testify concerning a communication made to him, in his professional capacity, by his client, or his advice thereon, without the client's consent; nor shall a clergyman or priest testify concerning any confession made to him, in his professional character, in the course of discipline enjoined by the Church to which he belongs without the consent of the person confessing."

*Louisiana*

Section 477, Code of Criminal Procedure

"No clergyman is permitted, without the consent of the person making the communication to disclose any communication made to him in confidence by one seeking his spiritual advice or consolation, or any information that he may have gotten by reason of such communication."

*Michigan*

Section 27.910, Michigan Statutes Annotated, the Judicature Act

"No minister of the gospel, or priest of any denomination whatsoever, shall be allowed to disclose any confessions made to him in his professional character in the course of discipline enjoined by the rules or practices of such denomination."

Section 28.1045, Code of Criminal Procedure

"The rules of evidence in civil actions insofar as the same are applicable, shall govern in all criminal and quasi criminal proceedings, except as otherwise provided by law."

*Minnesota*

Section 595.02(3) Minnesota Statutes, 1945

"A clergyman or other minister of any religion shall not without the consent of the party making the confession, be allowed to disclose a confession made to him in his professional capacity, in the course of discipline enjoined by the rules or practice of the religious body to which he belongs; nor shall a clergyman or other minister of any religion be examined as to any communication made to him by any person seeking religious or spiritual advice, aid or comfort or his advice given thereon in the course of his professional character, without the consent of such person."

*Missouri*

Section 1895, Missouri Revised Statutes Annotated

"The following persons shall be incompetent to testify: . . .

"Fourth, a minister of the gospel or priest of any denomination, concerning a confession made to him in his professional character, in the course of discipline enjoined by the rules or practice of such denomination."

*Montana*

Section 93-701-4(4), Revised Code of Montana, 1947

"There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore a person cannot be examined as a witness in the following cases: . . .

"3. A clergyman or priest cannot without the consent of the person making the confession be examined as to any confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs."

*Nebraska*

Section 25-1201, Revised Statutes of Nebraska, 1943

"The following persons shall be incompetent to testify: . . .

"(4) A clergyman or priest, concerning any confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs, without the consent of the person making the confession."

Section 25-1206, supra

"No practicing attorney, counselor, physician, surgeon, minister of the gospel or priest of any denomination, shall be allowed in giving testimony to disclose any confidential communication properly intrusted to him in his professional character and necessary and proper to enable him to discharge the functions of his office according to the usual course of practice or discipline."

*Nevada*

Section 8973, Nevada Compiled Laws, 1929

"A clergyman or priest shall not, without the consent of the person making the confession, be examined as a witness as to any confession made to him in his professional character."

*New Jersey*

Section 2:97-5.1, New Jersey Statutes Annotated, 1951 Supplement

"A clergyman, or other minister of any religion, shall not be allowed or compelled to disclose in any court, or to any public

officer, a confession made to him in his professional character, or as a spiritual advisor in the course of discipline enjoined by the rules or practices of the religious body to which he belongs or of the religion which he professes."

*New Mexico*

Section 20-112, New Mexico Revised Statutes Annotated, 1941

". . . A clergyman can not, without the consent of the person making the confession be examined as to any confession or disclosure made to him in his professional character.

*New York*

Section 351, Nichols-Cahill, Civil Practice Acts, 1946

"A clergyman, or other minister of any religion, shall not be allowed to disclose a confession made to him, in his professional character in the course of discipline enjoined by the rules or practices of the religious body to which he belongs."

*North Dakota*

Section 31.0106, North Dakota Revised Code, 1943

"A person cannot be examined as a witness in the following cases. . . .

"2. A clergyman or priest, without the consent of the person making the confession cannot be examined as to any confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs."

Section 31.0107, supra

"If a person testifies as a witness as to any subject which comes within the protection of any of the provisions of the first three subsections of section 31.0106 he shall be deemed to have consented to the examination of an attorney, clergyman, priest, physician or surgeon on the same subject matter."

*Ohio*

Section 11494, Page's Ohio General Code, Annotated

"The following persons shall not testify in certain respects: . . .

" (2) A clergyman or priest, concerning a confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs."

*Oklahoma*

Section 12-385 (Civil Procedure) Oklahoma Statutes Annotated Supplement, 1946

" The following persons shall be incompetent to testify: . . .

" (5) A clergyman or priest concerning any confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs, without the consent of the person making the confession."

Section 22-702 (Criminal Procedure), supra

" Except as otherwise prescribed in this and the following chapter the rules of evidence in civil cases are applicable also in criminal cases . . . . "

*Oregon*

Section 3-104, Oregon Compiled Laws Annotated

" There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore a person cannot be examined as a witness in the following cases: . . .

" (3) A priest or clergyman shall not, without the consent of the person making the confession be examined as to any confession made to him in his professional character, in the course of discipline enjoined by the church to which he belongs."

*South Dakota*

Section 36.0101, South Dakota Code of 1939

" . . . (2) A clergyman or priest cannot, without the consent of the person making the confession be examined as to any confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs."

*Utah*

Section 104-49-3, Code of Civil Procedure, Utah Code Annotated, 1943

"There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate. Therefore a person cannot be examined as a witness in the following cases: . . .

"(3) A clergyman or priest cannot without the consent of the person making the confession, be examined as to any confession made to him in his professional character in the course of the discipline enjoined by the church to which he belongs."

Section 105-45-1 (Criminal Procedure), supra

"The rules for determining the competency of witnesses in civil actions shall be applicable also to criminal actions and proceedings . . . ."

*Vermont*

Section 1740, Vermont Statutes, 1947

"A priest or minister of the gospel shall not be permitted to testify in court to statements made to him by a person under the sanctity of a religious confessional."

*Washington*

Section 1214 (Civil Procedure), Remington's Revised Statutes of Washington, Annotated

"The following persons shall not be examined as witnesses: . . .

"3. A clergyman or priest shall not, without the consent of the person making the confession, be examined as to any confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs."

Section 2147 (Criminal Procedure), supra

"Witnesses competent to testify in civil cases shall be competent in criminal prosecutions, but regular physicians or surgeons, clergymen or priests, shall be protected from testifying as to confessions, or information received from any defendant, by virtue of their profession and character."

*West Virginia*

Section 4992, West Virginia Code of 1949

"The following persons are incompetent to testify . . .

"(d) A minister, clergyman or priest of any religious denomination concerning any confession made to him according to the course of discipline enjoined by the church."

*Wisconsin*

Section 325-20, Wisconsin Statutes of 1949

"A clergyman or other minister of any religion shall not be allowed to disclose a confession made to him in his professional character, in the course of discipline enjoined by the rules or practice of the religious body to which he belongs without consent thereto by the party confessing."

*Wyoming*

Section 3-2602, Wyoming Compiled Statutes of 1945

"The following persons shall not testify in certain respects: . . .

"2. A clergyman or priest, concerning a confession made to him in his professional character, in the course of discipline enjoined by the church to which he belongs."

*Alaska*

Section 58-6-5, Compiled Laws of Alaska, 1949

"A priest or clergyman shall not, without the consent of the person making the confession, be examined as to any confession made to him in his professional capacity in the course of discipline enjoined by the church to which he belongs."

*Hawaii*

Section 9840, Revised Laws of Hawaii, 1945

"No clergyman or any church or religious denomination shall, without the consent of the person making the confession, divulge in any action, suit, or proceeding, whether civil or criminal any confession made to him in his professional character according to the uses of the church or religious denomination to which he belongs . . . ."

*Courts Martial in Armed Forces of the United States*

"Among the communications to which a privilege attaches are certain communications between husband and wife, client and attorney, and penitent and clergyman. . . . Also privileged are communications between a person subject to military law and a chaplain, priest, or clergyman of any denomination made in the relationship of penitent and chaplain, priest, or clergyman, either as a formal act of religion or concerning a matter of conscience. The person entitled to the benefit of the privilege pertaining to confidential communications between husband and wife is the spouse who made the communications; the person entitled to the benefit of the client and attorney privilege is the client; and the person entitled to the benefit of the penitent and clergyman privilege is the penitent." *Manual for Courts Martial, United States,* 1951, Section 151b(2), page 285.

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## GERMAN CONCORDAT CHALLENGED IN WUERTTEMBERG-BADEN

The validity of the Concordat executed in 1933 between the German Reich and the Holy See has been challenged by the government of the West German State of Wuerttemberg-Baden, in the American Zone. Its Constituent Assembly rejected, by a slight majority of the government parties, an effort to recognize the Concordat in the State's new Constitution. Involved in the dispute was the guarantee in the Concordat providing for denominational (confessional) schools, a guarantee nullified by the article in the draft Constitution calling for the introduction of so-called Christian community (interdenominational) schools. This article was met with a vigorous protest from the Apostolic Nunciature which sent a note to the Wuerttemberg government as well as to the Foreign Office of the West German Federal Republic.

# INSINCERE "CAUTIONES", IN THE LIGHT OF RECENT ROTA DECISIONS*

## Part I

### The Rota Arguments

IT has been the experience of the Catholic Church from its earliest years that marriages between Catholics and non-Catholics are fraught with danger to the faith of the Catholic party and to the welfare of children who may be born to such marriages. Hence they are forbidden not alone by the law of the Church but also by the natural divine law. And as long as this danger to the Catholic party and to the future offspring remains imminent in character, the prohibition of the natural divine law remains in full force. Before the prohibition of the natural law can be relaxed, the danger of perversion must be either obviated entirely or at least rendered remote.

Recognizing the dangers inherent in such marriages the Church has added her own prohibition of them to the prohibition contained in the natural law, by establishing two canonical impediments—"*mixta religio*" and "*disparitas cultus*"—the former forbidding marriages between Catholics and baptized non-Catholics; the latter, forbidding marriages between Catholics and unbaptized persons. Of their nature these impediments are simply prohibitive, since they do not touch marriage in its substance. But, from ecclesiastical law, disparity of worship has become a diriment impediment;—it renders invalid the marriage attempted in the face of the ecclesiastical prohibition, without a dispensation from competent ecclesiastical authority.

* Paper read on November 13, 1952, by Very Rev. J. Norbert Kelly, *Officialis* of the Tribunal of Albany, at the annual meeting of The Canon Law Society of America in St. Louis.

As far as the natural divine law is concerned, a mixed marriage would be illicit even after an ecclesiastical dispensation had been granted if the danger of perversion had not been obviated or rendered remote. But with regard to the nullifying character of the impediment of disparity of worship, since it exists only by virtue of the positive legislation of the Church, the impediment ceases to be diriment as soon as it has been removed through a dispensation, even if, in a particular case, the danger of perversion has not actually been removed or rendered remote.

In order that the prohibition of divine law may cease, the following *conditions* are required (to quote the Instruction of the Holy Office of January 3, 1871) " ut exclusum sit a parte fideli quodlibet perversionis periculum, et universa proles utriusque sexus in sancta religione educetur, et suscipiatur a parte catholica onus curandi ut alteram acatholicam partem ad veram fidem unitatemque catholicam perducat ".

Assurance must be had that these conditions—obliging by divine law and which no dispensation can ever relax—will be kept. It is had in practice by the exacting of the required guarantees, or as the time-honored expression has it—*the cautiones.*

" Ecclesia . . . non dispensat, nisi . . . cautionem praestiterit coniux acatholicus de amovendo a coniuge catholico perversionis periculo, et uterque coniux de universa prole catholice tantum baptizanda et educanda ".[1]

The Church grants no dispensation from the impediment of disparity of worship or from mixed religion, unless the non-Catholic party gives guarantees that the danger of perversion for the Catholic party will be removed, and both parties promise that all the children will be baptized and reared in the Catholic faith. Ordinarily these *cautiones* should be demanded in writing. And the Ordinary must have acquired moral certitude " *de cautionum implemento* ", to quote the wording of Canon 1061.

[1] Can. 1061.

Everyone admits that the Ordinary, over and above the material furnishing of the guarantees, should likewise have acquired moral certitude that the non-Catholic party will so conduct himself in marriage as to remove the danger of perversion from the Catholic party; moral certitude, likewise, that both parties will so conduct themselves in marriage as to assure the Catholic baptism and rearing of all progeny.

But if the contracting parties, especially the non-Catholic, deceive the dispensing Ordinary concerning their interior sincerity; if, while outwardly complying with the formalities of the *cautiones,* they inwardly have an intention contrary to what appears outwardly, and the deceived Ordinary grants the dispensation because the couple had complied with the externals required of them—what then? Will the dispensation thus granted be valid because the Ordinary had the requisite moral certitude, or will it be null, because *de facto* no guarantees have actually—really—been made?

Canonists are not in agreement in their answers to this question. It came to the fore in 1933 and from then until 1935 was vigorously debated in a series of articles in various ecclesiastical periodicals both in this country and abroad. The following is a partial list of canonists who hold that insincere *cautiones* do invalidate the dispensation:—Petrovits,[2] Woywod,[3] W. H. O'Neil,[4] Payen,[5] Nau,[6] White,[7] Harrington,[8]

[2] *The New Church Law on Matrimony* (Philadelphia: McVey, 1921), p. 178.

[3] *A Practical Commentary on the Code of Canon Law,* 2 vols. (New York: Jos. F. Wagner, 1925), I, n. 1056.

[4] *Papal Rescripts of Favor,* The Catholic University of America Canon Law Studies, n. 57 (Washington, D. C.: The Catholic University of America, 1930), p. 115.

[5] *De Matrimonio in Missionibus ac Potissimum in Sinis Tractatus Practicus et Casus,* 2. ed., 3 vols. (Zi-ka-wei: Typographia T'ou-sè-wè, 1935-36), I, nn. 1182-84.

[6] *Manual of the Marriage Laws of Canon Law* (New York: Pustet, 1933), p. 72.

[7] *Canonical Ante-nuptial Promises and the Civil Law,* The Catholic University of America Canon Law Studies, n. 91 (Washington, D. C.: The Catholic University of America, 1934), p. 36.

[8] "The Importance of the *Cautiones* in Disparity of Worship"—*The Ecclesiastical Review,* LXV (1921), 257-62.

Foley,[9] P. O'Neil,[10] Sartori,[11] Prümmer,[12] Cappello,[13] Chelodi.[14]

The following is a partial list of canonists who hold that insincere cautiones do *not* render the dispensation invalid:— O'Donnell,[15] DeSmet,[16] Ayrinhac-Lydon,[17] Doheny,[18] Schenk,[19] Vromant,[20] Boyle,[21] Ter Haar,[22] Park,[23] Vlaming-Bender,[24] DeClerq.[25]

For the sake of brevity in this paper I shall hereafter refer to the group who hold that insincere *cautiones* invalidate the

[9] "Insincere Ante-nuptial Guarantees"—*The Ecclesiastical Review*, XCII (1935), 72, 73; "Sincerity of the Promises before Mixed Marriages"—*The Homiletic and Pastoral Review*, XXXIII (1933), 742-43.

[10] "Disparity of Worship and Fictitious Guarantees"—*Irish Ecclesiastical Record*, 5th Series, XLI (1933), 630-35.

[11] *Enchiridion Canonicum* (1935), p. 295.

[12] *Manuale Theologiae Moralis*, 3 vols., 3. ed., III, 191 ff.

[13] *Tractatus Canonico-Moralis de Sacramentis*, 5 vols., Vol. V, *De Matrimonio*, 5. ed. (Romae: Marietti, 1947), n. 312.

[14] *Ius Canonicum de Matrimonio*, 5. ed. (Vincenza: Società Anonima, 1947), p. 70.

[15] "Mixed Marriage Guarantees"—*Irish Ecclesiastical Record*, 5th Series, XVIII (1921), 411-18.

[16] *Tractatus Theologico-Canonicus de Sponsalibus et Matrimonio*, 4. ed., (Brugis: Beyaert, 1927), pp. 441, 517, 731-32, esp. 731, nota 3.

[17] *Marriage Legislation in the New Code of Canon Law*, p. 108.

[18] *Canonical Procedure in Matrimonial Cases* (Milwaukee: Bruce, 1948), p. 652.

[19] *The Matrimonial Impediments of Mixed Religion and Disparity of Cult*, The Catholic University of America Canon Law Studies, n. 51 (Washington, D. C.: The Catholic University of America, 1929), pp. 248-54.

[20] *Ius Missionariorum*, 8 toms., Tom. V, *De Matrimonio* (Louvain: Museum Lessianum, 1931), p. 136.

[21] *The Juridic Effects of Moral Certitude on Pre-nuptial Guarantees*, The Catholic University of America Canon Law Studies, n. 150 (Washington, D. C.: The Catholic University of America Press, 1942), p. 101.

[22] *Mixed Marriages and Their Remedies*, translation by Aloysius Walter (New York: Pustet, 1933), p. 95.

[23] "Insincere Ante-nuptial Guarantees"—*The Ecclesiastical Review*, XCI (1934), 446-59.

[24] *Praelectiones Iuris Matrimonii*, 4. ed. (1950), p. 150.

[25] *De Sacramentis*, p. 330, n. 4.

dispensation simply as the " proponents of nullity "; and to those who hold that insincere *cautiones* do not invalidate the dispensation, simply as the " proponents of validity ".

Perhaps the best known phase of the controversy on this point is the celebrated series of articles that appeared in the periodical *Ius Pontificium* from 1933 to 1935. In this animated discussion Toso upheld the validity of the dispensation, while Oesterle argued for its nullity.

It would be beyond the scope of this paper to restate all the arguments advanced by these illustrious canonists. An excellent summation of them is to be found in Boyle's dissertation *The Juridic Effects of Moral Certitude on Pre-Nuptial Guarantees,* published in 1942.

Among authors who have written more recently, Vermeersch-Creusen (who in earlier editions had been silent altogether in the matter) now make mention of the controversy, without venturing an opinion of their own. Cardinal Gasparri, in his 1932 edition, omits all mention of the problem. Cappello breaks the silence of his earlier editions to argue for the nullity of the dispensation. A Coronata,[26] writing in 1946, argues for validity in one part of his book and for nullity in another part of the same edition. Vlaming-Bender, in the fourth edition published in 1950, holds that the dispensation is valid. But this work makes no mention of the Rota decision in the Albany case, declaring the dispensation and marriage null, although that decision had been rendered two years before.

It is interesting to note that Vromant, in the third edition of his *De Matrimonio,* published in June 1952, still adheres to his orginial opinion, favoring the validity of the dispensation. " Coniuges debent . . . . promittere cautelarum seu conditionum iniunctarum observationem, et quidem serio ac fidenter. Sed etsi ficte promittant, ad valorem tamen dispensationis sufficit quod cautiones exigantur, atque in iis

26 *Institutiones Iuris Canonici, De Sacramentis,* Vol. III (Taurini-Romae: Marietti, 1946).

condicionibus externis praestentur, quae non relinquant dubium serium, sive de earum sinceritate pro praesenti, sive de earundem implemento pro futuro. In dispensando enim Ecclesia attendet *externam manifestationem* sinceritatis, quod attinet ad personas—atque, quod spectat circumstantias, *externam securitatem* de cautionum implemento."

And in writing the foregoing, the author was cognizant of the first two Rota decisions declaring the dispensation null in such cases.

During the course of the controversy, writers on both sides had pointed out that there existed no decisions of the S. Roman Rota which dealt with the precise point at issue, and consequently no argument one way or the other could be drawn from Rotal jurisprudence. That situation has changed. To this writer's knowledge, there now exist three decisions of the Rota which deal precisely with the question of fictitious *cautiones,* and in all three cases the Rota has declared that the *cautiones ficte praestitae* rendered the dispensation invalid, and, of course, the subsequent marriages, since all were cases of disparity of cult.

It is the purpose of this paper to study in detail these three Rotal sentences; to note what arguments "*in iure*" were adduced to warrant the conclusions arrived at; to study the objections proposed and answered; and lastly to consider briefly the "*in facto*" sections, noting what sort of proofs and evidence were presented to convince the judges of the Rota that the insincerity of the parties in signing the *cautiones* had been satisfactorily established. This latter portion will be of practical interest to those of us who are engaged in Tribunal work.

The first Rota decision, *coram* Brennan, was rendered January 26, 1948, and confirmed the sentence of the Albany Tribunal which had been rendered on July 20, 1942, declaring null the dispensation and marriage on the grounds of insincere *cautiones.*

A word of explanation may well be offered as to why the Albany Tribunal happened to admit the case to trial on such

a "*caput nullitatis*". Since it appeared that the plaintiff was the *causa nullitatis*, the marriage was accused by the *Promotor Iustitiae*. His libellus was dated November 5, 1937. Later the members of the Tribunal became doubtful as to whether the "*bonum publicum*" required this trial; doubtful also, as to whether a "*dubium iuris*" existed about insincere *cautiones* invalidating the dispensation. As a result, the Bishop submitted the whole case as it stood (it was then ready for the "*publicatio processus*") to the Holy Office. The following reply was received from the Holy Office on November 25, 1939.

"Processus, in casu, prosequatur apud Tribunal Curiae Dioecesanae, quod sententiam proferat in prima instantia et appellatio fiat ad Sanctum Officium".

The second and third Rota decisions dealt with one and the same marriage [a Brooklyn case] and declared its nullity in first and second instance "*ob non sincere praestitas cautiones*". These decisions were dated April 4, 1951, *coram* Felici; and February 26, 1952, *coram* Brennan. You have already received a brief resume of the facts of each of these cases, so it will be unnecessary to repeat these facts at this point.[27] Let us turn at once, then, to the "*In Iure*" sections of these decisions.

It is to be noted that all three Rota decisions contain explicit statements that it is *certain* that insincere *cautiones* rendered the dispensation invalid.

1. "Tamen *certa* videtur sententia quae negat validitatem dispensationis" (Albany Decision *coram* Brennan).
2. "Omnibus tamen consideratis, Patribus *certum* visum est non posse ad valorem dispensationis sustineri cautiones insincere seu ficte praestitas; nempe ut dispensatio et matrimonium valeat cautiones esse sincere praestandas" (*coram* Felici).

27 The facts are also presented in Part III of the present study. Cf. also THE JURIST, IX (1949), 50.

3. "Omnibus perpensis, dispensationem invalidam fieri ob ficte praestitas cautiones, *certum* est" (Brooklyn, *coram* Brennan).

These decisions state what is admitted by all canonists, namely, that the *cautiones* are required for the validity of the dispensation. "Tanta est earum necessitas ut . . . etiam urgente periculo mortis, imponendae et exigendae sint (can. 1043) et quidem sub poena nullitatis ipsius dispensationis; nam ut statuit Decretum S. Officii diei 13 ianuarii, 1932 secus ipsa dispensatio sit prorsus nulla et invalida" (Brooklyn, *c.* Brennan).

It is likewise admitted by all authorities, and is beyond controversy, that the purpose of the Church legislation is to secure the observance of the divine law in the matter.

"Iure ipso divino vitetur necesse est contumelia creatoris tum in parte fideli tum in universa prole nascitura [I am quoting from the Albany case, *c.* Brennan. It then goes on to explain what is meant by the classic expression "*contumelia Creatoris*"]. Abesse ideo debet proximum periculum perversionis in nupturiente fideli, et in tuto collocanda est educatio prolis in catholica religione. Hisce conditionibus non verificatis, dispensatio forte concessa a Romano Pontifice, scienter, esset illicita; dispensatio vero impertita ab inferioribus Praelatis nullitate laboraret".

### *The First Argument of the Rota*

The Rota decisions then go on to give their main argument for holding as certain that insincere *cautiones* do nullify the dispensation. It is based upon an analysis of what precisely is demanded by the legislator as an essential prerequisite for a valid dispensation. "Legislator ad valorem exigit *promissionem*, non tantum scriptum aliquod documentum [Brooklyn, *c.* Felici] vel, si documentum exigit, ideo exigit ut certitudinem sibi comparet promissionis".

Here we are getting at the real heart of the matter. The legislator demands a promise,—not just a mere piece of writ-

ing. And then the *sententia coram* Felici goes on to discuss what precisely is a promise. " Promissio autem est actus voluntatis quo quis ad aliquid faciendum omittendumve se obligat. Ubi talis voluntas deficit (et deficit certo in eo qui simulate agit), promissio non habetur, neque propterea obligatio moralis quae promissionem consequitur: frustratur igitur intentio et scopus legislatoris promissionem ad valorem exquirentis, ideoque et cessat dispensationis beneficium ".

Continuing along the same line of argument the sentence *c.* Felici quotes and adopts a passage from the Albany sentence *c.* Brennan which meets and answers one of the principal arguments of the proponents of validity, viz. that there is no piece of positive Church legislation which expressly requires that the *cautiones* be sincere under pain of invalidity of the dispensation:—" Nec obiiciatur sinceritatem nullibi exigi expresse ad validitatem concedendae dispensationis. Exigitur enim *ex ipsa natura* cautionis quae in subiecta materia est actus scriptus quo quis aliquid sollemniter promittit. Age vero, quando ab Ecclesia cautiones seu promissiones exiguntur ut conditio pro dispensationis gratia concedenda, eae intelliguntur praestandae quemadmodum quaevis promissio. Quae, ex sui ipsius notione, nihil aliud est nisi manifestatio actualis voluntatis aliquid in futurum dandi, praestandi etc. Insincera promissio veri nominis promissio non est, cum nullam contineat *actualem voluntatem* aliquid faciendi ".

The Rotal judges hold, therefore, that the essential element which the Church demands in granting a dispensation for a mixed or disparate marriage is not a mere piece of writing but this " *actus voluntatis* ", this " *actualis voluntas* " on the part of the non-Catholic.

The opposite view—that of the proponents of validity—is well summarized and stated by Vlaming-Bender in the 1950 edition:—" Essentia cautionum, de quibus in c. 1061, non est promissio, sed elementa externa promissioni adiuncta, quae vim constringendi exserunt independenter a voluntate per-

sonae, quae cautiones praestat. . . . Si autem cautio non est ipsa promissio, defectus promissionis qui consistit in fictione (insinceritate) non efficit ut desint vere cautiones. Quando autem non desunt verae cautiones, dispensatio ex hoc capite non est invalida".

Here, then, we have two radically different notions of just what it is that the Church demands by way of guarantee before relaxing its invalidating prohibition of a disparate marriage. The proponents of validity hold that all the Church requires are these "*elementa externa promissioni adiuncta*". The three Rota sentences hold, on the contrary, that the real thing demanded by the Church is the "*actualis voluntas*". And the third decision, published only last May, adds a little more to the argumentation already quoted on this point from the two previous decisions:—"Nec valet obiectio qua edicitur Ecclesiam nullibi sinceritatem cautionum praescribere. Nisi enim contrarium probetur, Codex Iuris Canonici notionem promissionis numquam mutavit. Quodsi Ecclesia vult, ad dispensationem aliquam conferendam, tamquam elementum essentiale promissionem, nequit hoc requisitum ita enervatum acceptare ut amplius promissio dici nequeat" (Brooklyn, *c.* Brennan).

The Church simply is not satisfied with the mere shell without the nut, the pod without the peas, the shucks without the ears of corn, the "*species*" without the "*substantia*".

The decisions then go on to argue, very logically, that the all-important end that the Church intended to be secured by the device of the *cautiones* simply isn't secured by insincere cautiones. "Per insinceras cautiones [I am quoting from the Albany decision, *c.* Brennan] apparenter tantum non realiter conditiones verificantur; manet enim contumelia Creatoris. Namque si promissiones fiant cum animo eas non implendi, nequit dici de facto remotum periculum perversionis coniugis vel saltem educationis prolis extra catholicam fidem".

You simply have not removed the *" contumelia Creatoris "* by insincere promises. You simply have not removed the danger of perversion by insincere promises. You simply have not removed the risk of non-Catholic rearing of offspring by insincere promises. Thus the Albany decision *c.* Brennan argues, and the Brooklyn decision *c.* Felici pursues the same line of reasoning, quoting and amplifying the passage from the Albany decision: " Citata sententia Albanensis in America c. Brennan censet merito per insinceras cautiones manere adhuc contumeliam Creatoris, quam contra legislator intendit per exactas cautiones avertere ". The decision then takes up one of the Defensor Vinculi's objections, admits the truth of what he says, but goes on to insist: " Verumtamen, omnibus his concessis, id vere constat legislatorem positiva voluntate idcirco cum valore irritanti statuisse cautiones ut contumelia vitaretur Creatoris: qua igitur non vitata, imo per simulationem aucta, satis patet voluntas legislatoris benficii dispensationis non largiendi. Quid enim interest inter eum qui cautiones neque explicite neque implicite praestat, et eum qui specie tectus promissionis, ovina scilicet sub pelle, gregem ingreditur fidelium, nisi quod hic longe sit peior illo? Itaque 'cum per omnia sit eadem ratio utrobique: ergo idem ius' (Ioannes Andreae, Glossa in VI, Venetiis 1591: c Saepe contingit, tit. De tempor. ordinat. et qualit. Ordinand. in VI, pag. 143 col. 1). Non est ergo uni concedendus qui alteri denegatur favor."

To sum up, then, this principal argument, enunciated in all three Rota Sentences, holds that 1. what the Church demands is not a mere piece of writing, but a *" promissio "*, an *" actualis voluntas "*, and 2. that it is evident from the very nature of a promise that this promise must be sincerely made.

### *The Second Argument of the Rota*

The second argument used by the Rota flows logically from the first. In the first argument the Rota has been maintaining that what the Church demands for the dispensation in

question is not a mere bit of writing but an "*actualis voluntas*". In its second argument, the Rota argues that this position is confirmed by the now-well-known response of the Holy Office, dated May 10, 1941.[28]

The part of the response pertinent to our purpose is the "*Et ad mentem*" conclusion, the translation of which I quote: "The mind of the Sacred Congregation of the Holy Office is that, even though the Holy See has required, from practice established from time immemorial, and now does strictly demand, in all mixed marriages whatsoever that there must be guarantees for the fulfillment of the conditions by a formal promise exacted and made by both parties (Canons 1061-1071), nevertheless the use of either the ordinary or delegated faculty of dispensing cannot be said to be invalid if both parties have made the promises at least implicitly, that is to say, have acted in such a way that it can be deduced, and established in the external forum, that they understood the obligation of fulfilling the conditions and manifested a firm purpose [firmum propositum] of accomplishing said obligation [. . . eos actus posuerit e quibus concludendum sit et in foro externo constare possit eam cognoscere obligationem adimplendi conditiones et manifestasse firmum propositum illi obligationi satisfaciendi]".

It is to be observed, in passing, that this response was issued six years after the celebrated Toso-Oesterle debate and hence, of course, did not figure in that controversy.

It is this response of the Holy Office and especially that requirement of a "*firmum propositum*" which attracted the attention of the Rota lawyers and auditors in both trials of the Brooklyn case. This is apparent in the following quotation from the decision *c.* Felici.

"Ipsa Sacra Congregatio Sancti Officii in responsione diei 10 maii, 1941, haud obscure manifestavit rationem potius habendam esse voluntatis promittentis quam scriptae externae declarationis, cum admiserit invalidum dici non posse

[28] *Acta Apostolicae Sedis*, XXXIII (1941), 294, 295.

matrimonium 'si utraque pars saltem implicite cautiones praestiterit, i.e. eos actus posuerit e quibus concludendum sit et in foro externo constare possit eam cognoscere obligationem adimplendi conditiones et manifestasse *firmum* propositum illi obligationi satisfaciendi' ".

The Brooklyn sentence *c.* Brennan uses the same line of argumentation as can be seen from the following quotation.

" Sententiae huiusmodi certitudo ulterius suffragium depromit ab iis quae Suprema Sacra Congregatio Sancti Officii edixit in responsione diei 10 maii, 1941, quibusque haud obscure innuit quanti facienda sit voluntas promittentis potius quam scripta declaratio ".

" Suprema Sacra Congregatio enim invalidum haberi haud sinit matrimonium 'si utraque pars saltem implicite cautiones praestiterit, i.e. eos actus posuerit e quibus concludendum sit, et in foro externo constare possit eam cognoscere obligationem adimplendi conditiones et manifestasse firmum propositum illi obligationi satisfaciendi' ".

The sententia *c.* Brennan in the Brooklyn case then continues: " Hanc esse Sancti Officii mentem ulterius confirmatum extitit ab eádem Suprema Sacra Congregatione ubi ratam habuit sententiam a Tribunali Vicariatus Urbis editam die 9 aprilis, 1949, qua nullum declarabatur matrimonium ob cautiones ficte praestitas."

The reference in the foregoing offers an opportune point in our paper to make mention of this decision of the Tribunal of the Vicariate of Rome. On April 9, 1949 that Tribunal declared null a marriage *" ob cautiones ficte praestatas "*. I quote from the Vicariate decision:—

" Patres aestimarunt hanc postremam sententiam (scil. cautiones fictas . . . reddere invalidam dispensationem) tenendam esse, nam haud praesumendum est quod Ecclesia, in exigendis cautionibus ad valorem, non attendat ad factum internum, quod quidem praecipuum est in actibus humanis; et, si exigit factum externum, hoc non fit nisi ut per ipsum

attingat factum internum. Deficiente consensu seu interno actu voluntatis, Ecclesia absque dubio non concederet dispensationem; quapropter concludendum est ipsam (scil. Ecclesiam) factum internum *etiam* considerare." This Vicariate decision then goes on, likewise, to quote the response of the Holy Office of May 10, 1941, in support of the contention of nullity of the dispensation, and it then comments as follows on the words of the Holy Office: "Hisce ergo verbis perpensis, ad validitatem dispensationis requiritur ut aliquo modo contrahens in foro externo manifestet firmum propositum illi obligationi satisfaciendi, seu aliis verbis requiritur a) firmum propositum; b) manifestatio huius propositi in foro externo. Iam autem quomodo componi potest firmum propositum sese obligandi cum cautionibus ficte praestitis? Et, a fortiori, nullum dubium adesse potest de invaliditate dispensationis si, non obstantibus cautionibus praestitis, aliis expresse manifestaverit nullum firmum propositum habere illi obligationi satisfaciendi". Let me repeat:—The Vicariate Tribunal declared this marriage null "*ob cautiones ficte praestitas*"; the Defensor Vinculi of the Vicariate took an appeal from the decision directly to the Holy Office, and the Holy Office ratified and confirmed the sentence of the Vicariate, without remanding the case to the Rota for a formal trial in second instance. This seems to me to constitute the strongest single piece of evidence that has yet come to light to support the proponents of nullity in their contention that *cautiones* given insincerely render the dispensation granted on the strength of them invalid.

### *The Third Argument of the Rota*

The third argument used by these Rota decisions is based upon the requirement of Canon 1061, § 1, 3°, whereby the Church demands *moral certitude* under pain of nullity of the dispensation. "Ecclesia . . . non dispensat, nisi . . . moralis habeatur certitudo de cautionum implemento". The argument, briefly, is that this requisite certitude can not be acquired simply by a bit of writing, considered as such.

Taking up this line of argument, the most recent decision, i.e. the one *coram* Brennan in the Brooklyn case, goes on to state: " Cautiones ficte praestitas dispensationem latam irritasse ex eo quoque deducitur quod lex exigit, ad validitatem, moralem certitudinem de earundem implemento (can. 1061,-1-2). Simplex scriptura vel aliud signum hanc moralem certitudinem ferre nequit si scriptura impune enervari potest per absentiam cuiuslibet voluntatis implendi ea quae lineantur. Edicitur in appellata sententia c. Felici, sub n. 6/b: " Neque obiiciatur ex externa quoque promissione ingeri posse in mentem dispensantis moralem certitudinem: si enim attendatur finis a legislatore intentus, non tam valet in subiecta materia status mentis concedentis seu dispensantis, quam potius,—ut patet etiam ex memorato nuper responso Sancti Officii [that is, the response of May 10, 1941]—, cumulus rationum et argumentorum ' e quibus concludendum sit et in foro externo constare possit eam (scilicet partem promittentem) cognoscere obligationem adimplendi conditiones et manifestasse firmum propositum illi obligationi satisfaciendi '. Sed quaelibet rationes argumentaque cedunt simulationi seu numquam elicitae voluntati sese obligandi ".

Notice, also, how this argument, drawn from the necessity of moral certitude, likewise harks back to that celebrated response of the Holy Office of May 10, 1941. It stresses the fact that we must look to the end intended by the legislator. The legislator is concerned not so much with the state of mind of the one dispensing as he is with the real state of mind of the one petitioning the dispensation, and promising the essentials, the " sine-qua-nons " for that dispensation.

The Brooklyn decision *coram* Brennan then concludes with a succinct summation of just what these written *cautiones* amount to:—" Praestatio igitur cautionum scripto facta, seu modus eas patefaciendi, non est nisi tutius requisitum quo auctoritas certior fit illas rite positas fuisse.

" Substantia rei, tamen, non in eiusmodi externa et formali praestatione consistit, sed in voluntate promittentis nititur,

cuius existentiam manifestant adiuncta a iure requisita. Voluntate absente, legitima species utique praebetur, at, cum essentia destituta sit, nil valet".

"Nequit concipi legislatorem supremum speciem elegisse quin de substantia cogitaret, viamque stravisse cuilibet fictioni".

It is inconceivable that the Supreme Lawgiver in the Church would be content with mere appearances, and not be concerned about the substance, thus throwing the door open to all sorts of simulation.

### *The Fourth Argument of the Rota*

The final argument used by the Rota is based on the fact that the Holy Office remanded the Brooklyn case to the Rota to be tried in second instance on the two grounds mentioned above, and also to be tried in first instance [and I now quote the letter of the Holy Office to the Rota, dated July 4, 1950] to be tried in first instance on the grounds of "L'invalida dispensa dell'impedimento di disparità di culto per finte cauzioni". The Rota decision goes on to argue from this fact that there cannot now exist any "*dubium iuris*" in the matter, else it would be futile for it to be directed to try the case on such grounds. "Ne praetereamus denique (id quod nostram conclusionem oblique sed valide confirmat) frustra quidem dedisse Sanctum Officium facultatem videndi etiam de invalida dispensatione ob insinceras cautiones, si inde ab initio causa ob obiectum dubium iuris, tali sub aspectu, dimittenda esset" (Brooklyn, *c.* Felici n. 6d).

The same argumentation would hold valid in the Albany case, since it was the Holy Office that authorized the Albany Tribunal to go on to a decision in first instance, and later remanded the case to the Rota for a decision in second instance.

## Part II

### The Weight of These Rota Decisions as a Norm For Inferior Tribunals

In June and September of 1951, two articles appeared in the new French Quarterly *Review of Canon Law* published in Strasbourg. They were written by the Officialis of Paris, Monsignor Fernand Nogues, who still argues that there is yet at least a " *dubium iuris* " in this matter of insincere *cautiones*. The first article, which discussed the Rota decision *coram* Brennan in the Albany case, had hardly been published when its author learned of two other decisions favoring nullity, viz. the Vicariate sentence, and the Rota sentence *coram* Felici in the Brooklyn case. So the Officialis of Paris wrote a second article, still protesting that the multiplying decisions in favor of nullity must not be interpreted as warranting the conclusion that the contrary opinion, viz. that of the proponents of validity, is now devoid of all probability.

I wish to quote the following passage from the second of these articles and ask you to take note of the reasoning manifested in it.

" To our knowledge, four diocesan tribunals have pronounced upon the matter up to now; if two have been in favor of nullity (Albany, July 20, 1942; Vicariate of Rome, April 9, 1949) two have taken the contrary position (Brooklyn in 1947, Paris in a sentence dated February 5, 1951). Note the similarity to the Roman Rota with two sentences for nullity (*Albanen. coram Brennan,* January 26, 1948, and *Brooklynien. coram Felici,* April 4, 1951) as against two sentences for validity (*Parisien. coram Solieri,* Aug. 11, 1921; *Burdigalen. coram Wynen,* March 3, 1942)."

Now it seems to me that that version of the " score " is an unconscionable distortion of the facts. With regard to the diocesan tribunals, Brooklyn never even tried the case in question on the grounds under discussion. And, with regard to the Rota decisions, the cited decisions *coram* Solieri and

Wynen did not turn on the point under discussion, but just barely mentioned it in passing.

Let us, then, to keep the record straight, set down a more accurate and up-to-date version of the "score". Three times the Rota has handed down decisions which dealt avowedly with this question of whether insincere *cautiones* entailed the nullity of the dispensation and marriage, and in all three cases the decision has been "*constat de nullitate*". With regard to diocesan tribunals, I understand that very recently the Brooklyn Tribunal declared null a marriage because of an invalid dispensation resulting from *insincere cautiones*. This case is now in the hands of the Holy Office for a decision in second instance.

What weight have these Rota decisions with reference to inferior tribunals? Understanding jurisprudence as "the constant manner of judging", Archbishop Cicognani defines it as: "the constant and uniform decisions which the competent tribunals have rendered concerning a particular class of causes"; or as it is called in Roman law "the authority of matters adjudged in the same manner".

"Jurisprudence taken in the above sense, has great weight with the tribunals, the judges and jurists, but before it can constitute a true source of law it must possess certain requisites. Thus it must be lawfully prescribed, that is, it must be a firm and fixed manner of judging. Jurisprudence acquires this characteristic after an adequate number of uniform decisions have been rendered by the tribunals, and certain other conditions, (e.g. of time) that are usually required for prescribing a custom, a Stylus and the like, have been more or less fulfilled. Since the jurisprudence of the Dicasteries of the Roman Curia has acquired these necessary notes, it follows that all inferior judges are bound to observe it".[29]

Maroto writes in similar vein [30] and his opinion is quoted

[29] Cicognani, *Canon Law*, Authorized English version by J. O'Hara and F. Brennan, 2. ed. (Philadelphia: Dolphin Press, 1935), p. 109.

[30] *Institutiones Iuris Canonici*, I, 433.

and adopted by the Rota itself in a Decision *coram* Wynen, dated May 6, 1941.[31]

While there are only three decisions of the Rota touching upon the matter of insincere *cautiones* rendering the dispensation invalid, still it is to be stressed that all three are *recent* decisions and that all three have reached the same conclusion, viz. that such a dispensation is invalid, and that there is now no " *dubium iuris* " in the matter.

## Part III

### The Nature of the Proofs of Insincerity

And now we come to the more practical side of this paper, viz. a brief consideration of the proofs presented—the evidence adduced—to convince the *Auditores* of the Rota that the insincerity of the non-Catholic party in signing the *cautiones* had been satisfactorily established.

The whole matter, of course, boils down to a case of simulation. A person who goes through the outward formalities of signing the *cautiones* while harboring inwardly the positive intention of not fulfilling their stipulations, is guilty of simulation. And, in general, it can be stated that the same type of evidence, which affords moral certitude of simulation of matrimonial consent, will suffice to prove simulation in this matter of the *cautiones,* viz. the admission of the simulator, *coram testibus,* that he did simulate or intended to simulate agreement to the stipulations of the *cautiones;* the establishment of a " *causa simulandi* ", i.e. the demonstration that the simulator, in pretending to give the *cautiones,* had some motive which, according to his lights, seemed reasonable, seemed weighty, seemed upright enough to justify him in perpetrating the deception; and last, the circumstances—the happenings before, during and after the signing of the *cautiones*—constituting a chain of facts, interrelated and confirmatory, which add up to simulation;—which can be ex-

[31] *S.R.R. Decisiones,* XXXIII (1941), 369.

plained in no other way except on the supposition that the person, in signing the *cautiones,* was not sincere.

This is the sort of evidence that is to be found in both the Albany and Brooklyn cases. In both cases the woman was the non-Catholic party;—one with a strong Protestant background, the other of Jewish parentage.

In the Albany case, the woman was pregnant. Yet, pregnant though she was, facing the loss of reputation, she nevertheless had the effrontery to lay down the terms on which she would marry; she dared to try to make the man marry her her way, otherwise she threatened to disgrace him in the eyes of his own family by revealing to them her pregnancy and his responsibility for it. This the man sought to avert at all costs. This woman, despite her progressing pregnancy, refused at first even to be married by a priest; then sought by every means to evade signing the *cautiones*; finally, when convinced that there could be no marriage before a priest without that formality, she complied. But immediately after leaving the rectory she became so angry as to become hysterical, and absolutely refused to go through with the marriage, unless the man would go with her the next day to her lawyer, and sign before him a set of stipulations which would be the direct opposite of the Catholic *cautiones.* This the man did. The rest of the story is of a piece with this. There were two wedding ceremonies, one before the priest, another before a minister. When the baby was born, while the mother was still in confinement, the devout sister of the husband had it baptized a Catholic. As soon as the mother was able to get about, she took it to her minister and had it baptized a Protestant. And so it went,—continual strife and bickering over religion, estrangement, separation, divorce.

The Brooklyn case is similar in many ways. The parties had been married civilly for two years before any religious ceremony took place. They had largely abandoned the practice of their respective ancestral religions and had joined the Ethical Culture Society of New York. The devout parents of

the man were urging him to rectify his marital status. The woman, on the other hand, didn't want any part of a Catholic marriage, and countered with a demand that he marry her before a rabbi. The upshot was that he married her before a rabbi, and pretended to be Jewish, lest the rabbi refuse to marry them. And this happened on the very same day that the pair signed the *cautiones* before the priest. The Catholic ceremony took place six days later. The man induced the woman to sign the *cautiones,* telling her that it was just " *una formalità* " to be complied with, and giving her the impression that it placed her under no obligation; he simply wanted to end thereby the importunings of his own parents.

In fact the man had tried to engineer a substitution of persons before a strange priest, that he might spare the Jewess the necessity of going through any Catholic ceremony, which she found distasteful, and at the same time acquire a Catholic marriage certificate which he could show to his parents.

A child was eventually born. The Jewish mother refused to permit it to be baptized even when the priest-brother of her husband urged her to allow it. The mother saw to it that the child was reared in the Jewish religion.

From all these considerations it is easy to see how the circumstantial evidence in both the Albany and Brooklyn cases added up to strong proof of the insincerity of these women in signing the *cautiones.*

In each case, moreover, there was a " *confessio simulantis* " and the " *causa simulandi* " was clearly established.

In the Albany case, of course, there was a very unusual piece of evidence, viz. the document that we may call the " Protestant *cautiones* " drawn up and signed before the lay notary, stipulating " that the issue of such marriage, if any, shall be reared to believe in the teachings of the Protestant religion, and that the party of the first part [viz. the Catholic man] will not at any time or in any manner, either directly or indirectly, attempt to influence such child or children to adopt the Roman Catholic religion, but on the contrary, will

encourage it or them to uphold in every respect all Protestant beliefs."

In this regard the *mulier conventa* testified that she believed that this compact before the lawyer superseded and nullified the document signed before the priest, and that she intended it to do so.

The "*causa simulandi*" was simply this. The woman had to get married, and the only way the man would marry her was before a priest. After much inquiry she became convinced that no priest would marry her unless she signed the *cautiones*. So she signed, but insincerely. In all the arguments on this score with her fiance, she justified her simulation by maintaining "that the mother should bring the child up her way because she was entitled to it because of the suffering she had to go through in bearing and rearing the child".

In the Brooklyn case, likewise, a "*confessio simulantis*" was obtained, and the "*causa simulandi*" was established satisfactorily. The Jewish woman was already married civilly and, as an adherent of the Ethical Culture Society, she was content with that domestic status. So apparently was the man. He was a Catholic in name only. Left to themselves, it is questionable whether either of them would have sought further matrimonial ceremonies. But his parents kept insisting on a Catholic marriage. To rid herself of this annoyance, the woman finally consented to a Catholic ceremony, but she regarded it and its preliminaries as a mere formality—and her husband portrayed it to her as such—mere "red tape" involving no commitments, no obligations. She disclosed her attitude to several witnesses *tempore non suspecto*; to one she termed the signing of the cautiones "*una farsa*". Right after returning from the Catholic ceremony she declared that [I quote] "the whole business was just time wasted. She said, further, that as far as she was concerned, she was determined never to live up to the promises she had signed. She

said that her life was her own, and that no church should ruin it or try to ruin it ".

In conclusion I feel that one final observation and suggestion in this matter of proofs may be opportune. Admittedly it is never easy to prove any kind of simulation. Still, I believe that it will be easier in practice to prove simulation in this matter of the *cautiones* than it is to establish simulation of matrimonial consent. Whatever may be the reasons impelling one to simulate consent, the person is likely to keep his own counsel and not tell even his intimates that he intends to simulate consent or that he just has simulated consent. In short there is little likelihood of the person imparting such a confidence to potential witnesses *tempore non suspecto*. With the *cautiones* it is different. The non-Catholic will likely feel aggrieved at the very " arrogance " of the Church in daring to require such guarantees; will likely complain to non-Catholic intimates and associates about the " unfairness " of such a demand; may even admit openly to such friends that he has no intention of living up to such promises that are thus " unjustly exacted ". In short, there is likely to be more *talk* in the matter of the *cautiones*. And where there has been " talk ", there exist potential witnesses.

I would underscore " *potential* ". While there are likely to *be* witnesses, it is *equally likely* that they will be unwilling to testify. The very nature of the case makes it so. The whole affair is likely to be shot through with religious animosity, bitter bigotry, from the first squabble over the prospect of signing the *cautiones* even to the last domestic upheaval that results in the final separation and divorce. Yes, there is likely to *exist* plenty of evidence,—but to get it into the dossier,—aye, there's the rub.

In the Albany case, the woman had just one passing moment when she was willing to cooperate. We took her formal testimony on the spot, even though no libellus had yet been presented. It was well that we did. When she was again contacted, in the formal trial and again through a Rota

rogatory commission, she threatened to have us all arrested if we dared molest her further.

In the Brooklyn case, the woman never could be induced to testify in first instance. It was only after repeated efforts that she finally did give testimony in furtherance of the second Rota trial of the case.

In view of all this one is led to suggest that it will be wise to take the testimony of all these non-Catholics, whether parties to the marriage or witnesses, at the first opportunity that presents itself. There may never be a second one. The testimony can always be taken "*ad futuram rei memoriam*", and introduced *ex officio* at the proper point in the formal processus.

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## CONANT GUARANTEES "SAFETY" OF GERMAN SCHOOLS

Dr. James B. Conant, newly approved High Commissioner for Germany, pledged that he would not criticize or make suggestions regarding the German school system. He gave this assurance before the Senate Foreign Relations Committee in the hearing preceding the action of the Committee approving him. Subsequently the Senate also gave its approval to his appointment. He said in the course of the hearing that his views on American education are "not exportable" and that the question of State subsidy to private schools is peculiarly an American issue which does not exist in Germany. His defensive position was the result of a speech made in April of last year in which he was reported as saying that "many" of today's private high schools, operated along economic or religious lines, had brought a divisive attitude into American society and that "the greater the proportion of our youth who attend independent schools, the greater the threat to our democratic unity".

# BAPTISMAL CERTIFICATES FOR ADOPTED CHILDREN*

AMONG the authors and commentators *de rebus canonicis* whose works I have been able to consult, there are no disputes and disagreements regarding the contents of baptismal certificates for adopted children. However, the explanation of this lack of disagreement does not lie in a unanimity of opinion among the doctors but rather lies in their total silence on the subject. Apparently none of them is aware that any special problem is presented by a request for a certificate of the baptism of an adopted child. As we proceed, then, in this study, we shall have to make our way with little, if any, guidance from those whose opinions rightly carry so much weight with us.

Since it is perfectly clear what legal adoption is and what it connotes, there is apparently no reason to define or explain the term here. In explanation of terms, however, one or two things should be noted. First, let us not be confused by the term *children*. It is not to be understood so narrowly as to signify only the *minores* of canon 88, § 1; our interest is the baptismal certificates of the adopted of whatever age. Secondly, adopted children are not to be taken as synonymous with illegitimate children. It may be that illegitimate children constitute the greater part of the total number of the adopted; the Children's Bureau of the Federal Security Agency reports: "Various studies have shown that approximately one-half of all adoptions concern children born out of wedlock."[1] Some adopted children, therefore, are certainly

* Paper read May 7, 1952, at the meeting of the Eastern Regional Unit of The Canon Law Society of America in New York City by Very Rev. Msgr. E. Robert Arthur, J.C.L., *Vice Officialis* of the Archdiocese of Washington.

[1] *Essentials of Adoption Law and Procedure*, p. 5—Federal Security Agency, Social Security Administration, Children's Bureau Publication No. 331-1949.

legitimate and "may come from a family broken by death, serious illness of one parent, divorce, desertion, indifference, or lack of responsibility." [2] Some, e.g. foundlings, may have an uncertain status, i.e. we do not know with certainty if they are legitimate or not. Now we shall have in mind adopted children of all three classes, although not everything that will be suggested may be applicable to each of the categories.

With these preliminary remarks, we may begin by asking a question. Does the issuance of baptismal certificates for adopted children really present a special problem? Before giving the answer to the question, and I am sure that the answer for this country is perfectly obvious, I am prompted to comment that although canonists may properly ask the question, they *qua* canonists are not the ones to answer it. An accurate, reliable answer can come only from those whose work brings them into close contact with the adopted and their special needs and problems, or who by reason of their office are called upon to issue certificates of baptism for adopted children. These, i.e. the priests who are engaged in social work and the pastors and their assistants who are doing the real work of the priesthood in the parishes, these say that the issuance of baptismal certificates for adopted children does present a very special problem. They are acutely aware of the necessity and indeed of their obligation to keep accurate and correct records;[3] at the same time it is their wish that the certificates which they issue should not become the means of divulging confidential information to those who have no right to it or of concealing that same information from those who should have it. They want some procedure which, if it cannot completely eradicate their problem, will at least ease it and reduce it to a minimum. Diocesan Directors of Charities have devoted much thought and study and discussion to the problem. I am told that although they con-

[2] *When You Adopt a Child*, p. 7—Federal Security Agency, Social Security Administration, Children's Bureau Folder No. 13-1947.

[3] Cf. can. 470.

sider that some progress has been made, they are not yet satisfied that the best possible procedure has been devised. Here is where I think this Canon Law Society can help. Our pastors and our Directors of Charities are fully justified in turning to the canonists who are considered to have some skill in the law, and from them seek a procedure which, with the approval of the Ordinaries, can be used to protect the interests of the Church and of the adopted as well. In saying this, I do not for the moment think that in this study the best possible procedure will be outlined. Some suggestions will be made; some conclusions will be reached. But I conceive the real purpose of this study to be to start the discussion among us.

Apparently the problem which is posed by the issuance of baptismal certificates for adopted children is a problem especially peculiar to our country. This is not meant to imply that adoption is unknown outside the United States. As a matter of fact adoption is a practice of ancient origin. From the Old Testament we know that Moses was adopted by the Pharaoh's daughter and Esther was adopted by her uncle.[4] The Roman Law recognized it; the Greeks had laws relating to it; "it is known to have been well established in Asiatic countries"; and the codes of the modern civil law countries provide for it.[5] Perhaps there are not so many adoptions each year in other countries as there are in the United States where "adoption law has become universal."[6] I have been told that there were approximately eighty thousand petitions for adoptions in the United States in the year 1950, the latest

[4] Exod. II, 10; Esther II, 7 and 15.

[5] Cf. Buckland, *A Textbook of Roman Law* (Cambridge University Press, 2nd ed. 1932) pp. 121-128; Allotte de la Fuye, s.v. "Adoption," *Dictionnaire de Droit Canonique* (Paris, 1935–) I, col. 214 ff.; Bishop, *Adoption*, p. 1 (an article reproduced and distributed by Federal Security Agency, Social Security Administration, Children's Bureau, from *Social Work Year Book*, 1951); Smith, *Adoption Laws in Latin America*—Federal Security Agency, Social Security Administration, Children's Bureau Publication No. 335-1950.

[6] Bishop, *loc. cit.*

year for which figures are available, and the number increases with each passing year.[7] Perhaps the laws of other countries are such as to prevent the adoptive status of the child from being effectively hidden from outsiders. Perhaps there is not in other countries the attitude now prevalent in our country that things should be so arranged that the adopted child is indistinguishable from other children. Whatever the explanation may be, it seems safe to say that the ecclesiastical authorities in other countries have not felt any great need to provide special regulations for the registration and the certification of the baptism of adopted children. If this need is not felt in other countries, i.e. if the need is peculiar to our country, then it is all the more proper that we in this country devise, within the framework of existing canonical legislation, a procedure for issuing certificates of baptism for the adopted. In this we would be following the example set by our earlier churchmen who devised the system of Diocesan Consultors to replace the Cathedral Chapter.

A certificate to have any value must reflect a reliable record. Consequently, although our primary interest in this study is the baptismal certificate of the adopted child, it is proper and necessary to devote some attention to the record of baptism from which the certificate is issued. Here, I think, we should lay down the principle that whatever procedure we devise for the registration and the certification of baptism of the adopted, should depart no farther than is absolutely necessary from the usual procedure prescribed by those canons which relate to the proper minister of baptism, the place of baptism, and the recording of baptism. Special regulations should be established only insofar as the need for them is real. Generally it is not known with certainty at the time of birth and baptism if the child will or can be adopted. In this circum-

[7] According to Bishop (*loc. cit.*) the number of legal adoptions in 1944 was more than three times the number in 1934, and the estimated number of petitions in 1948 represented an increase of fifty percent over the estimated number in 1944.

stance there seems to be neither reason nor excuse for doing other than what the canons prescribe regarding the place, the minister and the registration of baptism. Therefore, the proper place for the child to be baptized is in the parish of domicile or quasi-domicile, and ordinarily this means the parish of the father's domicile or quasi-domicile.[8] If the child is illegitimate or posthumous the proper parish will be the parish of domicile or quasi-domicile of the mother.[9] However, if a child is born outside its proper parish, e.g. in a hospital or maternity home, and cannot *facile, quamprimum* and *sine mora* be baptized in its proper parish, then that child should be baptized in the parish which is most convenient.[10] Ordinarily this will be the parish in which the hospital or maternity home is located. If the hospital or maternity home has attached to it a church or public oratory, the Ordinary can permit or even command that for the convenience of the faithful a baptismal font be placed therein.[11] However, is it likely that the chapels which usually are attached to or situated within Catholic hospitals or maternity homes will have or can have the canonical status of churches or public oratories? [12] If they do not have such canonical status Ordinaries cannot permit the placing of baptismal fonts within them, neither can children be taken to them for *solemn* baptism in those circumstances of serious inconvenience or danger for which canon 775 provides.

Here it can be asked, where should that child be baptized which is born in an institution maintained for unmarried mothers? The law presumes that the baptism will and should take place in the parish of the mother's domicile or quasi-

[8] Cf. canons 93 and 738; also, Waldron, *Minister of Baptism*, Catholic University of America Canon Law Studies, n. 170 (Washington, D. C., The Catholic University of America Press, 1942), pp. 73 ff.

[9] Cf. can. 90, § 1.

[10] Cf. canons 738, § 2, and 770.

[11] Cf. can. 774, § 2.

[12] Cf. canons 1161 and 1188.

domicile.[13] However, in the case of the illegitimate child born in an institution for unmarried mothers, we must recognize that the danger of *admiratio* among the parishioners together with the accompanying anguished embarrassment on the part of the unfortunate mother constitutes real and serious inconvenience; moreover, it is usual that the child is not brought to the mother's home but remains in the institution of its birth or is transferred to some other institution until it is determined if the child will and can be adopted. In these circumstances the child cannot easily and *quamprimum* be brought to the mother's proper parish, and so it could licitly be baptized in the parish in which it actually is. It could be baptized in the chapel of the institution provided the chapel had the canonical status of a church or public oratory (which I for one think unlikely). Could the illegitimate child be solemnly baptized in a private home as provided in canon 776, § 1, n. 2? Certainly this could not licitly be adopted as a policy; but it must be granted that there could possibly be an *extraordinary* case of illegitimacy which would justify the Ordinary in permitting solemn baptism of the child in a private home, and in such circumstances we might even include the maternity home within the meaning of the term *domus privata.* As a general rule, however, it seems safe to say that the illegitimate infant could be baptized in the parish of its birth or of that institution to which the infant is brought for keeping until it is decided if it can and will be adopted.[14] Notification of the illegitimate child's baptism should be sent to the mother's proper parish.[15] However, if the proper pastor has been ignorant of the mother's extra-marital pregnancy due care should be exercised to protect the mother's right to a good name with her pastor. There is also the probable obligation on the part of the minister of the baptism to observe secrecy regarding information which he has acquired

[13] Cf. canons 90, § 1; 93, § 1; 738, § 1.

[14] Waldron, "Hospital Baptisms," *The Jurist,* III (1943), 587 ff.

[15] Cf. canon 778.

only in the exercise of his office. Canon 778 does give to the pastor a real right to be informed when a member of his parish is baptized neither by him nor in his presence, but this right which is bestowed by ecclesiastical law only, is surely not superior either to the unmarried mother's natural-law-right to a good name or to the obligation to observe secrecy which may rest upon him who baptized the illegitimate child.[16]

What of children, legitimate or illegitimate, who are no longer in the custody of parents but for whom a legal guardian has been appointed, or who have been placed for adoption, or who have actually been adopted? It is clear that such children are subject to the authority of their legal guardians or custodians or adoptive parents, and their domicile is that of the guardians, custodians or adoptive parents.[17] In addition, a child who is no longer an infant, i.e. *post plenum septennium,* can acquire his own quasi-domicile.[18] Therefore, these children should be baptized in the proper parish of those to whose authority they are subject, or in the parish of the quasi-domicile of the child who is no longer an infant.

These things being said about the place of baptism, we can move on to consider the registration of the baptism. The

[16] Regarding this question of the unmarried mother's right to a good reputation and also her right to an exercise of secrecy on the part of whoever shall have baptized her child, I must refer you to the moral theologians. According to Arregui (*Summarium Theologiae Moralis*, ed. 12a [Bilbao, 1934], n. 434) the public good requires that an occult matrimonial impediment not be divulged by a physician, attorney or pastor who has learned of it only in the exercise of his office. If a pastor is obliged to permit an invalid marriage to be contracted rather than violate his obligation to observe secrecy, what is to be said about the obligation to observe strict secrecy on the part of the priest who knows of the unmarried mother's plight only because of his position in a diocesan bureau of charities or because he has been asked to baptize the child? And is the pastor's right to be informed of the baptism of the illegitimate child superior to the right of the proper Ordinary or pastor to know of the occult matrimonial impediment to which Arregui refers?

[17] Cf. canons 89 and 93, § 1.

[18] Cf. canons 88, § 3, and 93, § 2.

sacred canons impose upon the pastor the solemn duty of recording accurately, sedulously and promptly all those baptisms which are administered in his parish.[19] The baptized person has every right to proof that he enjoys membership in the society which is the Church and this proof comes first and foremost from the record of baptism. The Church has every right to know who is a member and what is the precise ecclesiastical status of each member and this knowledge comes principally from the baptismal records.[20] Also, I think we can agree with the principle which is generally accepted among social workers that every individual has a right to accurate and complete identification of himself and that the adopted child, too, by all means, has the right to know who he is.[21] So, both the individual and the Church have a direct interest in the accurate registration of baptism, and both interests will be adequately safeguarded if each pastor will religiously observe the prescriptions of the canons regarding the baptismal register.

Canon 777, § 1, prescribes that the pastor must enter in the baptismal register the following information: the name of the baptized; the names of the minister, the parents, and the sponsors; the place and date of baptism.[22] Canon 470, § 1, states that in the baptismal register the records should be entered in the manner approved by the Church or prescribed by the proper Ordinary. In this connection it, perhaps, is worth noting that the Roman Ritual gives us a form of record approved by the Church.[23] Canon 470, § 2, further prescribes

[19] Cf. canons 470 and 777, § 1; also S. C. Conc., 31 ian. 1927-Bouscaren, *Canon Law Digest,* II (Bruce Publishing Company, Milwaukee, 1943), 184; S. C. de Discip. Sacr., instr. *Sacrosanctum*, 29 iun. 1941, n. 11d—AAS, XXXIII (1941), 306; Hannan, "Parish for the Recording of Baptism," *The Jurist*, XI (1951), 525.

[20] O'Rourke, *Parish Registers*, Catholic University of America Canon Law Studies, n. 88 (Washington, D. C., The Catholic University of America Press, 1934), p. 45.

[21] *When You Adopt a Child*, p. 21.

[22] Cf. also can. 761.

[23] Cf. *Rituale Romanum*, tit. XII, cap. 2, *Forma describendi baptizatos.*

that to the baptismal record should be added notations concerning the reception of confirmation, the contracting of marriage (except marriage of conscience), the assumption of subdiaconate, and the profession of solemn vows.[24] There may be the need in some instances of entering other notations in the baptismal record, e.g. that baptism was administered conditionally, that the ceremonies were supplied at a later date, that the baptized is a foundling with the date, place and circumstances of finding, the name of the finder, and an estimate of the age of the foundling; that a sentence of matrimonial nullity was issued or a papal dissolution of marriage granted.[25] In view of the necessity of entering these several notations in the record of baptism, the designers and publishers of baptismal registers should take care to allot sufficient space for entering the *adnotanda.*

If the child or adult who is baptized is illegitimate, canon 777, § 2, prescribes that special caution shall be exercised in the matter of entering the names of the parents. The mother's name shall be entered if it is publicly known that she is the mother of this child or if she of her own will requests in writing or in the presence of two witnesses that her name be inserted in the record; likewise, the father's name shall be entered in the record if he of his own free will requests it of the pastor in writing or in the presence of two witnesses, or if from some public authentic document it is known that he is the father of this child. When the name of the father or of the mother or the names of both are entered in the baptismal record of the illegitimate child, a notation should be entered in the record describing the canonical basis for so entering the name; when the request for insertion is made in the presence of two witnesses, the names of the witnesses should be noted in the record together with their addresses or with whatever may be the means of locating them

[24] Cf. canons 798; 1103, § 2; 1011; 576, § 2.

[25] Cf. canons 749 and 1988; *Rit. Rom., loc. cit.*; S. Cong. de Discip. Sacr., decr. *Catholica doctrina,* 7 maii 1923, art. 106—*AAS,* XV (1923), 413.

in case their testimony is needed at a later date. In those instances in which the conditions established by the aforementioned canon 777, § 2, are not fulfilled the child is to be described in the baptismal register as the child of an unknown father or of unknown parents. Since the canon makes not even a reference to the possibility, I suppose we can concede that there will scarcely ever be a case of illegitimacy in which the father's name could be properly inserted in the baptismal record while the mother's could not. It would be well, I think, to emphasize for our own benefit as well as for the benefit of our fellow-priests who are engaged in parochial or social work, that the baptismal record of an illegitimate child is never to make direct and explicit mention of the fact of illegitimacy. If the wording of the record follows the prescriptions of the canon, the fact of illegitimacy will be apparent, to those who have a right to know, from the reference to the unknown father or parents or from the notation regarding the canonical basis for entering the name of the father or parents. Furthermore, on those occasions when it is imperative that the fact of illegitimacy be known to the proper ecclesiastical authorities, that fact will be additionally established by the lack of proof of a valid or at least a putative marriage on the part of the parents of the child.[26]

If the child is a foundling the record must show as much of the data required by canon 777 as is known with certainty; in addition a notation must be entered that the child has been baptized *sub conditione,* if that is the case,[27] and describing when, where, under what circumstances, and by whom the child was found, with an estimate of the foundling's age.[28]

Children born of a *matrimonium conscientiae* must be baptized with special caution exercised lest the baptism become the means of disclosing the marriage. The Church, therefore,

[26] Cf. can. 1114.

[27] Cf. can. 749.

[28] Cf. *Rit. Rom., loc. cit.*

permits false names to be inscribed in the baptismal record of a child born of this type of marriage, i.e. false names for the parents and consequently a false family name for the child;[29] the parents must, however, within thirty days send to the Ordinary who gave permission for the *matrimonium conscientiae* notification that the child has been born and been baptized together with their own, i.e. the parents' true names. Now the purpose of this legislation is above all to maintain and safeguard the secrecy of the marriage; but a further purpose of the use of the false names in the baptismal record is to take care that a child whose legitimacy is juridically certain is not regarded by others and registered as illegitimate or as a foundling, as well he might be if the false names were not inserted. This is a merciful provision of canonical legislation to which we shall return, for I think that it can serve to guide us as we seek a method for issuing baptismal certificates for adopted children.

Now it seems perfectly clear that the prescriptions of canons 777 and 749 plus the rubric of the Roman Ritual[30] must be observed even when the baptism of a child takes place after adoption. It could not ordinarily be permitted that the true and master record of baptism contain false information, e.g. that the names of the adoptive parents be inserted as though they were the natural parents. Therefore, when adoptive parents present an adopted child for baptism or when an adult who had been adopted is converted, the minister of baptism should be told the person's true status and identity, i.e. is the person legitimate, illegitimate, or a foundling, and the master record of baptism inscribed accordingly. A false humanitarianism should not induce us to presume that the Church, because she permits the use of false names for parents in the baptismal record of a child born of a

[29] Cf. canon 1106: "...*falsis expressis nominibus*"; also, Benedict XIV, ep. encycl. *Satis Vobis*, 17 nov. 1741, § 11: "...*vel reticitis, vel falso expressis nominibus parentum...*"—*Fontes*, N. 319.

[30] Tit. XII cap. 2.

marriage of conscience, will allow the insertion of similarly false names in the real baptismal record of an adopted child who is not born of a marriage of conscience. Therefore, it should be insisted upon that the true record of the baptism of a child who is to be adopted, or who has been adopted, must be inscribed in the manner prescribed by the aforementioned canons 777 and 749 and the rubric of the Roman Ritual (Tit. XII, cap. 2). If the reason for this is not apparent, then let it be recalled that the baptismal record is for the Church an important and weighty means of proving legitimacy, consanguinity, affinity, and spiritual relationship.[31] Illegitimacy renders a man unsuitable for the order of Bishop;[32] excludes him from the Cardinalate as well as from the office of Abbot or Prelate *nullius*;[33] bars him (and her) from being elected to the office of Major Superior in a religious institute;[34] and as an irregularity *ex defectu* impedes his licit reception of Holy Orders and even his entrance into a seminary.[35] The illegitimate may also be unacceptable as members in some communities of religions, both men and women, because of particular constitutions.[36] With regard to consanguinity, affinity and spiritual relationship, we are all aware that they are diriment impediments to marriage.[37] The Church, i.e. the Holy See, the local Ordinary, the Religious Superior and the priest in his parish will in specific cases be made aware of these impediments, irregularities and the like

[31] Hannan, "Value of Baptismal Register as Proof of Legitimacy," *The Jurist*, VII (1947), 72.

[32] Cf. can. 331, § 1, n. 1.

[33] Cf. canons 232, § 2, n. 1; 324, § 2.

[34] Cf. can. 504.

[35] Cf. canons 968, § 1; 984, n. 1; 1363, §§ 1-2.

[36] It is required, too, that the Reverend Auditors of the Sacred Roman Rota be born of legitimate marriage. Cf. *Normae S. R. Rotae Tribunalis*, art. 2, § 1.—*AAS*, XXVI (1934), 451. See, also, McDevitt, *Legitimacy and Legitimation*, Catholic University of America Canon Law Studies, n. 138 (Washington, D. C., The Catholic University of America Press, 1941), pp. 121 ff.

[37] Cf. canons 1076; 1077; 1079.

principally through the baptismal records; this is reason enough for insisting that the authentic record of baptism, what we can call the master record, be inscribed always in the manner prescribed by the cited canons and the rubric of the Roman Ritual.

Common sense and experience demand, however, that we recognize that there can be instances in which, because the law of the State forbids it, the names of the natural parents of the child already adopted cannot be disclosed even to the priest who will baptize the child or in whose custody the record of baptism will be. In these circumstances the record will carry as much of the required information as is obtainable and in a manner as conformable to the prescriptions of the canons as can be. It can be presumed that the adoptive parent will know at least if the child is legitimate, or born out of wedlock, or a foundling; certainly this much information about the child will be given to the adoptive parents even if the law will not permit them to know the identity of the natural parents. Therefore, the adoptive parent can communicate that information to the baptizing or recording priest. If the child is born out of wedlock, the inscription of the true record will be as it must be for any illegitimate child,[38] and so the record will read that this child is born of unknown parents. If the child is a foundling, again the inscription of the record will be in the manner prescribed for children of that category.[39] If the adoptive parents know that the child is truly legitimate, then in the record could be inserted a notation giving the date and place of adoption, the names of the adopting parents, and the information that the child is legitimate but the identity of the natural parents is secret and unknown to the adoptive parents because of the terms of the adoption laws of the State; great care should be exercised that the record of this child's baptism does not describe him simply as born of unknown parents, since such an

[38] Cf. can. 777, § 2.

[39] Cf. *Rit. Rom.*, tit. XII, cap. 2.

inscription would immediately place the child in the category of the illegitimate.

This brings us to the question of what is to be done in, to or with the record of baptism when the subject is legally adopted. Certainly, when a person's identity undergoes some legal mutation, the baptismal record should not ignore the fact and remain as if nothing had happened. At the very least it is desirable (the canons do not prescribe it) that a notation be entered in the baptismal record, stating the date and place of legal adoption and giving the names of the adopting parents; this should be done if for no other reason than that such a notation serves as a warning of the legal relationship which may be an impediment to marriage.[40] It may well be that this minimum, i.e. a brief notation of this kind in the original baptismal record, will be all that is necessary to effect the fulfillment of even the broadest aspirations of those who are worried with the problem represented by the issuance of baptismal certificates for the adopted. If this minimum is sufficient then let us by all means have nothing more, for the less recording and the less annotating there is, the more likely it is that we shall accomplish what we are trying to do.

Just what are we trying to do? Is it our purpose to conceal the fact of adoption? Not completely. Certainly it cannot be hidden from the natural parents or from the adoptive parents. Moreover, it is agreed that it should not be hidden from the adopted child, that the child should grow up naturally aware that his natural parents are not actually these who are rearing him. Moreover, with the adopted child and the adoptive parents aware of the fact of adoption there must be others who will be equally aware of it. Is it our purpose, then, to conceal the fact of illegitimacy? Again, the fact will hardly be hidden from the adopting parents. It is less likely that the adopted child will know of its illegitimate status, at least in its childhood years. I conceive our purpose to be

[40] Cf. canons 1059 and 1080.

this: to take care that our ecclesiastical records, and specifically the records of baptism, should never become the "occasion of loss of good repute".[41] The law cautions pastors to be watchful that the registers do not fall into the hands of extraneous persons; they should not as a rule be available to or entrusted to the laity; they should be kept in a safe place.[42] I personally believe that priests have a good record of not talking about matters which call for silence. Therefore, on the basis of both the law of the canons and the past record, there seems to be no reason for fearing that the baptismal records of the adopted will be granted anything less than the confidentiality which they deserve. Our purpose, then, is to have complete, accurate and reliable records, and also to take care that the information contained in those records is never used or disclosed in such manner as to bring anguish or ill-fame to anyone. This being understood, we may now consider what can and what should be done to baptismal records when legal adoption has taken place.

A minimum as to what should be done has already been stated, i.e. at the very least it should be noted in the baptismal record that the subject has been legally adopted, together with the date and place of adoption and the names of the adopting parents. Possibly this minimum will suffice to satisfy the aspirations of parish priests, Directors of Charities, and adoptive parents, and satisfy also the requirements of the laws of the several States. It seems to add to the record all the information that is needed even for the subsequent issuance of a certificate using the family name of the adoptive parents. However, there seem to be solid reasons for preferring that an entirely new record be entered in the baptismal register. The adoptive parents may wish the child to be known by an entirely different christian name; indeed, the

[41] Cf. Pont. Comm. ad Cod. Can. Auth. Interpr., 14 iul. 1922, VIII—*AAS*, XIV (1922), 528.

[42] Cf. canons 384 and 470, § 4; also, O'Rourke, *op. cit.*, pp. 10 ff.; Waldron, *The Minister of Baptism*, p. 175 f.

decree of adoption may specify that the child is legally granted this new name. There is generally the necessity of providing that the adoptive parents do not learn the names of the natural parents, and vice versa. It may even be found necessary to conceal the names of the true sponsors and to let others be recorded and be looked upon as the child's godparents. And finally there is the problem posed by the multiplicity of notations in a record; the more notations there are, the more probable it is that the record will eventually become an illegible mess. Now, whichever of the two procedures is adopted, i.e. entering a simple notation in the true record of baptism, or inscribing an entirely new record, there are certain precautions to be taken.

No notation of adoption should be entered, nor any new registration effected unless proof of the adoption is obtained. The simplest and obvious proof comes from a certified copy of the original birth record plus a copy of the decree of legal adoption. But as matters are developing in this country, the pastor in whose custody the register is, may be forced to obtain the necessary assurance from the Director of Charities for his diocese or for the diocese where the adoption took place. Once the notation of adoption or the new record is entered in the baptismal register, the new family name should be added to the index, preferably as close as space allows to the original entry in the index. When an entirely new record is entered in the register, a notation should be added to the new record referring back to the original record; likewise in the original record a notation should be entered referring forward to the new record. Notations regarding confirmation (after adoption), marriage, subdiaconate, solemn religious profession, a sentence of matrimonial nullity, and a grant of a papal dissolution of marriage, could well be entered in both the original and the new record.

If it is decided that the procedure to be followed in a given diocese is that of entering an entirely new record, further details of the procedure need to be determined. Where will the

new record be entered? Will it be in the usual register or will there be a distinct, special register for records of this type? If the new record is to be entered in the usual register, then, when it is foreseen that a child will in all probability be eventually adopted, the space in the register following the record of baptism could be left free so that when adoption is accomplished the new record could be entered therein. This would permit keeping even the new record where it chronologically belongs. Another method would be to leave free at the close of each month, or of each year, or at the end of each register, a few spaces which could be used for entering new records following the adoption of children who had been baptized in that preceding month or year, or whose original record is in that register. If no free spaces are provided, then there is nothing left to do but enter the new record in the first free space. If a distinct, special register is used for entering the new baptismal record following adoption, there seems to be no problem. New records would be entered in the chronological order in which the requests are received. Always, of course, there must be the notation stating where the original record of baptism is to be found.

Now we come to what some may think is the very heart of this problem. Where is the record of the baptism of an adopted child kept? It is evident both from the sacred canons (especially canon 778) and from a private reply of the Sacred Congregation of the Council on January 31, 1927, reported by Bouscaren,[43] that the record of baptism is to be entered in the register of the parish wherein the baptism was administered.[44] This of course refers to the original record and I can think of no reason why this prescription of the law should not be observed even in the case of adopted children. But what of the new record which will be inscribed following adoption? Must it also be kept in the parish of baptism? Here, too, the answer must be in the affirmative, unless a just

[43] Bouscaren, *loc. cit.*

[44] S. Cong. de Discip. Sacr., instr. *Sacrosanctum, loc. cit.*

and reasonable cause dictates that it should be otherwise. One such just and reasonable cause could be represented by this case: John has been baptized in St. Patrick's Church; the record of baptism bears the name of his parents, or at least of his mother; John is adopted; the office of Catholic Charities is the social agency which placed the child in the home for adoption and which obtained for the court the usual information regarding the child, its parents, and the adoptive parents; the law of the State requires that the original birth record and all the information obtained by the agency be declared confidential and sealed; the agency is required by law to take care that nothing which it does will, without the permission of the court, tend to disclose to the natural parents the identity of the adoptive parents or to the adoptive parents the identity of the natural parents; neither can anything be done which will tend to disclose this information to others. The Director of Charities decides that in these circumstances he is legally forbidden to give to the pastor in whose register the record of John's baptism is entered, the names of John's adoptive parents. What is to be done? Can the Director of Charities maintain a register of baptisms and in it insert a new record for John after he has received a transcript of the original record of baptism from the pastor of St. Patrick's? Certainly the sacred canons have no provisions for a Director of Charities keeping *authentic* baptismal records. But then in all probability the sacred canons never contemplated a situation such as is represented by the case of John. However, I believe that the canons are sufficiently comprehensive to provide a solution even for the case of John.

It will be recalled that canon 470 not only prescribes what parochial registers shall be diligently kept by the pastor, but it also prescribes that he shall send each year to the episcopal Curia an authentic copy of the parochial books.[45] These authentic copies are kept in what Louis calls the general or com-

[45] Cf. can. 470, § 2.

mon diocesan archives.[46] Canon 373 permits the Bishop to constitute notaries even for a limited purpose. Attestations bearing the signature of these notaries are acceptable as public documents and therefore constitute full proof of what they directly and principally affirm.[47] The Ordinary could constitute the Director of Charities an ecclesiastical notary for the specific and limited purpose of attesting information extracted from that part of the diocesan archives which holds the authentic copies of the baptismal records of the adopted. In addition, the Ordinary could authorize the Director of Charities to keep a register in which, simply for the sake of good order and convenience, he would enter what we might call a quasi-record of baptism in the manner previously described. With this register and with his access as a notary to the authentic copy of the real baptismal record in the diocesan archives, the Director of Charities *qua* notary could issue a canonically acceptable attestation that according to the records contained in the diocesan archives John was baptized at St. Patrick's Church, etc.; thus he should be able to solve the problem represented by John towards whom and towards whose natural and adoptive parents he has real obligations of secrecy. In those dioceses where it is not the practice to forward each year to the episcopal Curia authentic copies of the parochial books, the Ordinary, under the plan just described, would require that pastors submit authentic copies of the baptismal records of adopted children. The Director of Charities *qua* notary would then have access to these. It is understood that certificates or attestations of baptism should never be issued as coming from the office of the Director of Catholic Charities. I can think of nothing that is more unacceptable canonically and nothing more likely to arouse suspicion. If the attestation is not issued from the parish of baptism it should be issued from the Episcopal Curia.

[46] Cf. can. 375, § 1; also Louis, *Diocesan Archives*, Catholic University of America Studies, n. 137 (Washington, D. C., The Catholic University of America Press, 1941), p. 49.

[47] Cf. canons 373, §§ 1-2; 1813, § 1, n. 2; 1816.

Perhaps another method of solving the problem represented by the afore-mentioned John following his adoption would be to make use of the secret diocesan archives.[48] This, however, would appear to be a less convenient method and also one less likely to satisfy the obligation incumbent upon the Director of Charities to observe the required secrecy.

Finally we come to the matter of certificates of baptism for the adopted. No one will doubt that the first rule is that the certificate of baptism should issue from the parish in which the real, authentic record of the baptism is registered. The pastor of that parish is the official custodian of the record and it is his signature on the certificate which makes it a public document and gives to it its probative value.[49] Certificates of baptism for the adopted should not be issued from any other source than the parish of baptism except in the circumstances previously described, i.e. when the Director of Charities, as an ecclesiastical notary using the authentic copy of the original baptismal record in the diocesan archives, for a just and reasonable cause, issues a certification that the particular adopted child is baptized. It cannot be emphasized too much or too often that recourse should be had to this procedure only when it is morally impossible to obtain a certificate of baptism using the adopted name from the actual parish of baptism. It seems safe to say that this extraordinary procedure would have to be used only in behalf of the adopted who are still children. Certainly when the adopted shall have reached the age for entering a seminary, for contracting marriage, or for solemn religious profession, he will have learned the true facts about himself and he on his own authority will be in a position to go to the parish of his baptism and obtain an authentic copy of his true record.

Regarding the contents of the baptismal certificate issued for the adopted, much will depend upon the use for which the

[48] Cf. canons 375-382.

[49] Cf. canons 470; 1813, § 1, n. 4; 1814; 1816.

certificate is intended. If the purpose is merely to establish that the adopted person is baptized, i.e. a member of the Church, then it seems entirely permissible to issue a certificate that will not cause embarrassment or bring about loss of reputation. Certainly if the Church mercifully allows false names to be used in the records and certificates of baptism of children born of a marriage of conscience so as to protect both the parents and the children, she will not be less merciful to the adopted by refusing to permit false names to be used in their certificates when such usage will bring harm to no one but on the contrary will save from embarrassment the child and two sets of parents. Consequently, one could hardly object if the local Ordinary should authorize the issuance of certificates for the adopted exactly like those customarily used in this country, with the names of the adoptive parents inserted as if they were the natural parents and even with others than the real sponsors given as the god-parents. If we are trying to devise a procedure that will protect the child, the natural parents and the adoptive parents, then we must be prepared to issue a certificate that in its phrasing will be indistinguishable from the certificates issued to others. To do otherwise will simply defeat our purpose. A certificate of this kind would be sufficient to prove baptism and therefore the right to receive the sacraments of Holy Eucharist and Confirmation and, where it is required, to enter a Catholic school. It would not, however, be acceptable for marriage, entrance into a seminary, solemn religious profession, and the like; it should, therefore, bear a notation to the effect that the certificate is not valid in matters contemplated by canons 1021, § 1; 1363, §§ 1-2; 544, § 1.[50] On the occasions of marriage, entrance into a seminary,

[50] It would be very advantageous to have a standard baptismal certificate in use throughout the country. This certificate could be so phrased that it would never bring embarrassment to the adopted or illegitimate child nor to the natural or adoptive parents; neither could it be used to deceive those who have a right to complete konwledge of the child's origins and identity. A certificate of this kind could read thus:

or admission into a religious community an authentic copy of the true baptismal record with all the proper notations would be required and the pastor of the church of baptism could forward it directly to the priest who is making the prenuptial investigation, to the Bishop or superior of the seminary, or to the Superior of the religious community. By using one type of certificate for one purpose, and another type, i.e. an exact transcript for the other purposes, everything will be done that has to be done to take care that confidential information is not divulged to those who have no right to it, or concealed name, nonetheless the actual legislation does furnish us with from those who should have it.

And so, I feel that we can safely conclude that although there is no explicit canonical legislation either authorizing or condemning the re-registration of baptism following adoption and the issuance of baptismal certificates under the adoptive certain principles. The first such principle is that ecclesiastical superiors have the right to know if their subjects are born of lawful wedlock; illegitimacy is an impediment to the attainment to certain ecclesiastical ranks, offices, dignities and states. In addition, there is other information about her members which the Church has every right to possess. However, even if this knowledge must be available to proper ecclesiastical superiors it is not the Church's mind that the true

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Church of St. Agnes
Washington, D. C.

This is to certify that according to the records of this parish, John Doe, born May 1, 1932, was baptized May 7, 1932.

Philip Smith, Pastor

May 8, 1952

SEAL

N.B. Not valid in matters *de quibus* cc. 1021, § 1; 1363, §§ 1-2; 544, § 1.

On the reverse of this certificate would be the usual notations regarding Confirmation, marriage, the reception of Orders, or profession of vows.

status of all her members should be public. Indeed, and this is a second principle, it is her mind that baptismal records should never become the "occasion of loss of good repute". Thirdly, the Church does not have an inviolable rule and policy prohibiting under any and every circumstance the insertion of false names of parents in baptismal records in order to conceal the true parentage; and if the Church mercifully permits the insertion of false names in a record, certainly for equally serious reasons she will permit the insertion of false names of parents in a certificate of baptism. And finally, what the Church does require is that correct information regarding the person baptized be recorded somewhere, i.e. either in the parish of baptism or in the diocesan archives.

Guided by these principles and the prescriptions of the Church's actual legislation, there is no reason why Directors of Charities and canonists, working together, cannot devise a procedure for issuing baptismal certificates that will protect at once the interests of the Church and the interests of the adopted.

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## CALIFORNIA EXEMPTS PAROCHIAL SCHOOLS

In the referendum of November 4th parochial schools in California were exempted from taxation by a plurality of 77,477 votes. The votes favoring exemption totaled 2,441,005 and the votes against it, 2,363,528. Twenty-five of the State's fifty-eight counties voted in favor of exemption. But a complaint has been filed in Superior Court, Oakland, challenging the legality of the referendum. The complaint repeats the trite contention that exemption constitutes a State subsidy for parochial schools and thus violates the "principle of separation of Church and State."

# Cases and Studies

## AN AUTOMATICALLY CANCELED RESERVATION?

In our diocese the bishop has delegated the rural deans with the faculty of absolving from the diocesan reserved sins, and has likewise authorized them to subdelegate their faculty of absolving to a confessor upon the latter's application for it. If such a dean were to refuse sharing his faculty with a confessor, could the latter proceed to grant absolution inasmuch as the reservation is then no longer in effect? Or would he have to seek for the needed faculty from the diocesan ordinary, or perhaps send the penitent to one of the other rural deans for absolution, as long as he could undertake either of these alternatives without serious or notable inconvenience to the penitent or to himself?

TRUNCATUS

Can. 899.—§ 1. Statutis semel reservationibus quas vere necessarias aut utiles iudicaverint, curent locorum Ordinarii ut ad subditorum notitiam, quo meliore eis videatur modo, eaedem deducantur, nec facultatem a reservatis absolvendi cuivis et passim impertiant.

§ 2. At huiusmodi absolvendi facultas ipso iure competit canonico poenitentiario ad normam can. 401, § 1, et habitualiter impertiatur saltem vicariis foraneis, addita, praesertim in locis dioecesis a sede episcopali remotioribus, facultate subdelegandi toties confessarios sui districtus, si et quando pro urgentiore aliquo determinato casu ad eos recurrant.

Can. 900.—Quaevis reservatio omni vi caret:

2°. Quoties vel legitimus Superior petitam pro aliquo determinato casu absolvendi facultatem denegaverit, vel, prudenti confessarii iudicio, absolvendi facultatem denegaverit, vel, prudenti confessarii iudicio, absolvendi facultas a legitimo Superiore peti nequeat sine gravi poenitentis incommodo aut sine periculo violationis sigilli sacramentalis.

Perhaps the doubt as intimated in the query derives from the fact that canon 900, 2°, uses the specific expression *legitimus Superior* when referring to the one whose denial of the faculty to absolve sets the stage for the automatic forfeiture of all force in the reservation. Can a rural dean be regarded as a "*legitimus Superior*"? Or, even more basically, can anyone be classified as a *Superior* whenever he functions simply with a delegated power?

It should not be difficult to acknowledge a rural dean as a legitimate superior if one recalls that, when he has received the habitual delegation here considered he functions *in foro externo* whenever by

act of subdelegation he passes on his own faculty to any other confessor. The mere possession of a delegated power which is to be used exclusively *in foro sacramentali* does not make one a *legitimus Superior*. For example, if a confessor who has been delegated by the diocesan ordinary with the needed jurisdiction for absolving a penitent from a diocesan reserved sin should unreasonably refuse to grant the sought for absolution, then the penitent could not approach another confessor in order to submit the unabsolved sin as a sin that is no longer reserved. But, if the rural dean should refuse to share his faculty with a confessor who rightfully asks for it, then the dean's denial would suffice to free the penitent from seeking a confessor with the special faculty, for the reservation that normally attaches to the sin would then have lost all its binding force.

Blat (+ 1943) offered a very concise expression of doctrine in this matter: "*Quaevis . . . reservatio . . . omni vi caret,* seu 'ipso iure cessat,' ita ut facultate absolvendi speciali opus non sit: 2° *Quoties* seu in singulis casibus, quando a) *vel legitimus Superior* quicumque, etiam Vicarius foraneus, ad illam facultatem absolvendi a reservatis concedendam competens quamvis ex participatione, *petitam* de facto *pro aliquo determinato casu,* non ampliorem ac quocumque modo, *absolvendi facultatem* positive v. gr. verbis, factis, omissione deliberata *denegaverit,* b) *vel, prudenti confessarii iudicio, . . .*"[1]

The reason why the diocesan ordinary has delegated the rural deans with the faculty which they in turn can subdelegate in individual cases is this, namely, the greater ease and added convenience for penitents in seeking absolution from a reserved sin. If a dean's denial to share his faculty with a confessor made it necessary for the penitent to seek some other dean for obtaining absolution, or for the confessor to obtain the needed faculty from the diocesan ordinary before absolution from the sin can be granted, then indeed the penitent would reap a detriment in place of a benefit, and his effort to find the easier way would eventuate in an added hardship. Any law when properly interpreted cannot at the same time be such that it neutralizes its very object and purpose. The faculty which the dean has he is called on to share with the confessor upon every rightful request that the confessor presents. The dean's refusal without reason stands as a prohibition that actually proves futile,

[1] *Commentarium Textus Codicis Iuris Canonici,* Liber III, *De Rebus,* Pars I, *De Sacramentis* (2d. ed., Romae, 1924), n. 228, p. 267.

for just as little as the diocesan ordinary, so little also the rural dean, can block the process of absolution, for the sin in question ceases any further to be affected with any reservation, so that any priest with due confessional faculties can grant the desired absolution.

A final consideration may be offered. When the diocesan ordinary empowers the rural deans with the habitual faculty of absolving from the reserved sins he cannot grant any greater power than that which he himself possesses. Now, if the diocesan ordinary would himself deny his faculty to others when he is rightfully petitioned for it, then the petitioning confessor would gain the right to absolve the sin as a non-reserved sin. Accordingly it is not juridically conceivable that a delegated rural dean could bar the granting of absolution when the diocesan ordinary himself is powerless to do so. Sins are reserved *for absolution*, and not for a denial of it. The gaining of absolution may be made to cost more than the ordinary and regular effort, but it may never be gainsaid once that effort has been shown.

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## *TEMPUS UTILE* AND THE EASTER DUTY

In what sense is one to interpret and understand the phrase "*toto tempore ad praeceptum paschale adimplendum utili*," as it occurs in canon 899, § 3? Can a pastor absolve a penitent from a diocesan reserved sin even if the penitent, on the advice and instruction of his confessor (either the pastor here in question or some other priest), is fulfilling his Easter duty at a time outside the normally indicated Easter season?

INEXORABILIS

Can. 859.—§ 1. Omnis utriusque sexus fidelis, postquam ad annos discretionis, idest rationis usum, pervenerit, debet semel in anno, saltem in Paschate, Eucharistiae sacramentum recipere, nisi forte de consilio proprii sacerdotis, ob aliquam rationabilem causam, ad tempus ab eius perceptione duxerit abstinendum.

Can. 899.—§ 3. Ipso iure a casibus, quas quoquo modo sibi Ordinarii reservaverint, absolvere possunt tum parochi, aliive qui parochorum nomine in iure censentur, toto tempore ad praeceptum paschale adimplendum utili, tum singuli missionarii, quo tempore missiones ad populum haberi contingat.

By the law of the Code, as enacted in canon 859, § 2, the paschal season for the reception of the Paschal Communion extends from Palm Sunday to the Sunday that closes the octave of Easter. But a further concession is there made by the law. In consequence of

personal and local demands it becomes allowable for ordinaries to anticipate the starting point of the paschal season from the middle Sunday in Lent, and to prorogue the season's duration to Trinity Sunday. In this country, however, the season accommodated for the reception of the Paschal Communion takes its start as early as the first Sunday in Lent and continues through Trinity Sunday in consequence of a special grant issued on October 16, 1830, by the Sacred Congregation for the Propagation of the Faith in response to a request submitted by the bishops assembled at the I Provincial Council of Baltimore (1829).

The bishops had asked that this faculty be conceded, "*habita ratione sacerdotum inopiae, locorum distantiae, et consuetudinis iam vigentis.*" [1] These, then, were the conditions on which the grant was made. Since the bishops have neither collectively nor individually seen fit to declare that these conditions have ceased, it is to be assumed that the grant is still in full effect, for the positive determination regarding the presence or the absence of the postulated conditions rests with the same authority which in the beginning sensed the conditions to be present.

Throughout the entire Easter season—from the first Sunday in Lent to Trinity Sunday—a pastor has the needed faculty for absolving penitents from the diocesan reserved sins. Now, when a confessor calls upon a penitent to defer the reception of the sacrament of the Holy Eucharist to a time beyond Trinity Sunday, does the penitent become totally excused from fulfilling the Easter duty, or does he become enabled still to fulfill it outside the normally indicated duration of time?

If he became totally excused, one would have to admit that the obligation simply lapsed from whatever earlier existence it had; if he became enabled still to fulfill the obligation, one would naturally regard the obligation as still in existence, and as receiving its fulfillment later upon the reception of Holy Communion. The *nisi* clause in canon 859, § 3, does not in its grammatical structure seem to contemplate a negation of the entire statement that precedes; rather, it seems to denote a negation with reference exclusively to the phrase "*saltem in Paschate.*" In that same measure the *nisi* clause leaves the obligation stand as a task that can be fulfilled *etiam non in Paschate.*

[1] *Collectio Lacensis,* III (Friburgi Brisgoviae: Herder, 1875), col. 36.

One becomes excused from a law only in so far as the law at least implicitly acknowledges that fact. In the words of canon 859, § 1, there is nothing that points to such an implicit acknowledgment; rather, the way is left open for a fulfillment of the obligation through the intervention of the confessor with whose advice and counsel the sacrament of Holy Communion is received at a later time. For some reasonable cause the reception has been postponed. The very fact, however, of the reception spells out the fulfilling of an obligation, though it occur later than the normal conditions would demand, and such a reception in no way points to or connotes the cancellation of the earlier extant obligation. This view seems at least indirectly confirmed in canon 859, § 4, which insists that the precept of Paschal Communion continues still to blind if anyone, for any reason whatsoever, has not fulfilled the precept within the allotted interval of time.

In accord with the foregoing it appears altogether admissible for a pastor to absolve a penitent from a diocesan reserved sin in view of the faculties which the law itself grants him *toto tempore ad praeceptum paschale adimplendum utili.* Since the Easter season as a duration of time lapses continuously and without a break, it is evident that one cannot here think of the phrase *tempus utile* as pointing to a duration of time accompanied with interruptions or intermissions during which no opportunity existed for the fulfillment of a duty. Rather, one must take the phrase simply as pointing to whatever duration of time was lawfully set aside for the fulfillment of the Easter precept. If a confessor's intervention has prorogued the time during which the Easter precept can still be fulfilled, then the pastor can regard himself as empowered *ipso iure* for absolving a penitent from any diocesan reserved sin.

CLEMENT V. BASTNAGEL

THE CATHOLIC UNIVERSITY OF AMERICA

## PRECATORY WORDS IN A BEQUEST

The terms of a bequest are as follows: ... and the Roman Catholic Bishop, share and share alike, to be theirs absolutely and forever, with the request that the Roman Catholic Bishop deposit the said sum with a Catholic institution or religious corporation under instructions to secure perpetual remembrance by offering up Masses for the repose of the souls of myself and my parents.

It is the opinion of the attorneys for the estate that the gift was an outright gift to the Roman Catholic Bishop and that he was not bound by the language which appears in the bequest as a "request". He, therefore, prepared the decree settling the account in the estate, based upon this belief of the outright gift and the decree was signed in such manner. He said that it was his opinion, from his examination of the bequest, that the Roman Catholic Bishop was given the bequest free and clear of any limitation and that it was the intent and purpose of the testator that the Roman Catholic Bishop would use the funds in such manner as he himself determined. He believed that whatever the Roman Catholic Bishop would do with the funds would be based upon what would be practicable or possible in carrying out the request.

Is this opinion acceptable under the canons?

MINUENS

The form and nature of the language of the bequest have been the subject of judicial consideration over the years. It is a general rule that a bequest absolute in terms is not cut down by words precatory in nature expressing a mere wish, desire or request as to how the legatee shall divert the subject of the bequest. Many cases have been decided which have followed this ruling. A few of them may be mentioned as illustrating the manner in which the courts have applied this ruling. In one case there was an absolute gift to a wife with an expression of a desire and request that a certain disposition of the property be made by her. It was there held that this request was to be no limitation upon her right of disposition. In another a request that the sole beneficiary named in the Will care for another and that he use a portion of the funds received for the comfort and happiness of the other was held to be precatory only and not a limitation upon the absolute gift to the sole beneficiary. In a similar situation it was held that a trust was not created or an obligation imposed by the words, "It is my desire and request that S watch over and care for a certain person". In another case the testator devised all his estate to his wife, and thereafter he stated as follows: "It is my wish and desire that my wife pay certain sums to certain persons." The court held that no liability was created by this request.

But one has considerable doubt whether the doctrine of the secular courts can be applied to the request as made in this Will. It is true that in the cases cited the intent of the testator in the use of precatory words may have been that the legatee should carry out

the request just as easily seems to have been the intent of the present testator. For that reason, it is possible that if the cases cited had been brought before an ecclesiastical tribunal, the decision of the judge would have been at variance with that of the secular judge. In any event the cases cited establish that, before the secular courts, the " request " very probably does not create an obligation which these courts would enforce. How far the same conclusion can be adopted by an ecclesiastical judge is another matter.

Moreover, a certain delicacy of language seems appropriate in addressing a member of the hierarchy even in a Will. It would seem to be lacking in good taste and in the requisite etiquet to demand that a member of the hierarchy carry out the wish of a testator. It is this characteristic in an expression of intent addressed to a bishop that distinguishes it from a similar expression directed to a wife or a friend. There is, for this reason, much to be said for the position that the present testator went as far as seemed respectful in expressing his intent that he should secure perpetual remembrance through the offering of Masses. This point of view seems to win support from the language which the testator used in describing the relation of the bishop to the institution with which the said sum would be deposited, for the institution was to be " instructed " to secure perpetual remembrance through the offering of Masses. The reticence of language used by the testator in addressing the bishop disappears when the former refers to the institution which is to be the ultimate beneficiary of his bequest. The institution is placed by the testator under instructions, relayed through the bishop as intermediate legatee, to secure perpetual remembrance for the testator through the offering of Masses.

It seems warranted then to conclude that the testator at least probably placed as much store by the Masses that would be offered for the repose of his soul as he did by the perpetual remembrance. If this is so, his intent would not be fulfilled by a perpetual remembrance that would be secured otherwise than by the offering of Masses.

If one were personally responsible for the ultimate decision in the case, one might advisedly consult the Sacred Congregation of the Council before deciding that the offering of Masses would not constitute an essential element of the testator's intent.

## SANATION OF ORTHODOX MARRIAGE

May I have an opinion as to validity of a marriage between a baptised Serbian Orthodox man and an unbaptised wife. The couple have four children ranging in age from fifteen down to one year. The two oldest have made their first Holy Communion and one has been confirmed. The third is baptised and in the first grade of the parochial school and because these three are being reared in the Catholic Faith I baptised the baby. Now the mother wants to be baptised and is taking instructions and attends Mass regularly. Her husband has no objection to her and the children being Catholics but he has told her he will not go through another marriage ceremony and she is fearful he will sign no papers. I hate to lose the woman when she is so in earnest, yet if the marriage is invalid and the man refuses any cooperation in validation or a *sanatio* we will lose her and possibly her interest in furthering the Catholic education of her children.

ORIENS

It is the accepted doctrine that Orthodox dissidents are bound by the impediment of disparity of worship in virtue either of the enactment of the Council of Trullo in the seventh century or of the universal custom. In regard to this point an interesting discussion may be found in Marbach's article in the January 1949 issue of *The Jurist*. It is possible that a dispensation was obtained from the authorities of the Serbian Orthodox Church. Such a dispensation would be regarded as removing the impediment even though the Orthodox authorities do not possess jurisdiction. On the other hand, it is probable that no such dispensation was obtained.

The case does not state whether a Serbian priest blessed the marriage. It is not certain that this blessing is required for the validity of the marriage of an Oriental Dissident, as private responses of the Sacred Congregation for the Oriental Church indicate.[1]

As to the sanation of the marriage *ad cautelam*, it seems that the quinquennial faculties granted bishops in the United States by the Holy Office do not extend to this case, for the language of the faculty involved seems to extend only to an *attempted* marriage of a Catholic bound to contract marriage according to the canonical form. It is possible, however, that the language of the correlative faculty possessed by the Most Reverend Apostolic Delegate might extend to the case involved, i.e., one in which the impediment of disparity

[1] Cf. Gulovich, "The Principle Underlying the Validity of Oriental Marriage Law"—THE JURIST, VI (1946), 39 ff.

of worship renders invalid a marriage contracted by parties neither of whom was bound to contract marriage according to the canonical form.

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## THE EUCHARISTIC INDULT

The Sacred Congregation of the Sacraments recently renewed the faculties of the Bishops of the United States "dispensandi a lege ieiunii eucharistici per modum potus aut medicinae, durante tantum male affecta valetudine, fideles infirmos in nosocomiis degentes; sacerdotes infirmos in eorum rectoriis, domibus religiosis vel privatis degentes, more laicorum; fideles aegrotos, qui extra nosocomia, in domibus curationis vel etiam in privatis domibus degent".

In regard to this matter it is asked whether "fideles aegrotos, qui extra nosocomia, in domibus curationis vel etiam in privatis domibus degent", would apply to those cases of the faithful who to all external appearances are normal people working on ordinary jobs but who on account of ailments such as ulcers, heart disease, etc., are unable to observe the Eucharistic Fast while at the same time they are most desirous of receiving Holy Communion regularly. Such people are not really confined to their homes and the question is whether they could be included in the "fideles aegrotos, qui . . . in privatis domibus degent".

In connection with this same rescript other questions frequently arise regarding the interpretation of the phrase "dispensandi fideles habitualiter post mediam noctem laborantes". These difficulties may be formulated in questions as follows:

1. Could a nurse who normally works on night duty only one or two nights a week but works on the day shift for the rest of the week, be said to work "habitualiter post mediam noctem"?
2. Could a nurse who works habitually on an evening shift which ends at 12:30 a.m. or 1:00 a.m. in the morning, be said to work habitually after midnight? If not, how is the phrase "habitualiter post mediam noctem laborantes" to be interpreted in this respect?
3. Regarding those Brothers and Sisters who take care of the sick, how much of the preceding night must they have spent in the continuous service of the sick before they can be said to qualify for the dispensation from the Eucharistic Fast in order to receive Holy Communion in the morning?

CANDELA

The indult to which the questioner refers has been superseded by the Constitution, *Christus Dominus*, and by the instruction of the Supreme Sacred Congregation of the Holy Office relating to it. But in connection with this subject one must recommend the excellent dissertation of Stadler, *Frequent Holy Communion*. This dissertation was published in 1947 and thus lacks commentary on the exten-

sion of the recent concessions. But it has a very fine commentary on the indult, devoting twenty-two pages (pp. 64-86) to a consideration of the subject.[1]

Stadler requires that lay night workers be employed at least five nights a week in order to qualify as worthy of the indult, but he thinks that if a nursing Sister is employed in night work three nights a week she may enjoy the indult on the morning following the night on which she was so employed. The difference between the two cases is seen to rest in this that in the case of the Sister the favor aims at promoting daily Communion, while in the case of other night workers it aims at promoting frequent Communion. This interpretation is not in conflict with Rule V of the recently issued Constitution. However, the latter seems broader in its concession. It is conceivable that it allows its privilege to one who has worked only on the one night preceding his reception of Holy Communion.

As to night workers, it seems that the indult was available if they worked on a night shift protracted until some time after midnight, but this was not sufficient in the case of the indult permitting daily Communion to nursing Sisters inasmuch as the language of the indult required " nocturno continuo " as a condition for its applicability. Such an extensive requirement would seem to be satisfied only by night service till at least dawn. It is not apparent that Rule V of the Constitution places this restriction on Sisters.

It seems that the persons suffering a chronic ailment which does not prevent their occupation in ordinary employments were not regarded as the sick who are confined to their homes through their illness. Rule II of the Constitution seems more liberal than the indult in this respect.

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## NOVICES TRANSFERRED TO NEWLY FOUNDED MONASTERY

With the proper authorization of the Sacred Congregation for Religious, a group of contemplative nuns have established a new monastery in our midst. In doing this, the nuns who were authorized to constitute this new religious house brought with them from the independent monastery from which they departed two novices who had already spent several months in the novitiate of that house. Does the time spent in the novitiate in the one independent monastery coalesce with that to be spent in the newly founded monastery?

NOVITER

[1] The Catholic University of America Canon Law Studies, n. 263 (Washington, D. C.: The Catholic University of America Press, 1947).

There seems to be sufficient ground for believing that these novices can make this transfer without an interruption of their novitiate. If the two monasteries belonged to one and the same federation, this would be all the clearer in the light of the opinions of the commentators. But there is reason to accept this conclusion even when the monasteries belong to the same Order. In any event, one may safely rely on the rescript of the Sacred Congregation as contemplating this transfer of the novices and as preserving the continuity of their novitiate year.

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## PRESUMED BAPTISM RELATED TO THE PAULINE PRIVILEGE

The dissolution of a marriage which has been brought to the attention of our Tribunal depends to a certain extent on the validity of baptism of one of the parties. In brief, John, a doubtfully baptized person, contracted a civil marriage with Mary, an unbaptized person, in 1929. The marriage ended in civil divorce. Mary later became a Catholic, and now wishes to contract marriage with a Catholic.

We have the following statement from the minister who baptized John:

> "This is certify that I, the Rev. Richard Roe baptized John into fellowship of the town Baptist Church and did so in conformity with the doctrine and practice of the Baptists. I did not intend to confer Baptism as a sacrament as it is conferred in the Catholic Church and by various other creeds. I believe, teach and practice that Baptism is a symbolical ordinance and that it confers no inner cleansing nor has any sacramental effect. I consider it an outward sign of profession of faith in Jesus Christ and in obedience to His Command."

The response of the Holy Office of December 28, 1949[1] states that the baptism of Baptists is presumed to be valid unless in a particular case the contrary is proved. The Holy Office established a simple presumption, which can always be overcome by facts in any given case.

I am heartily in accord with the opinion of Ropella, who states: "If in a given case it can be proved that a non-Catholic minister had a positive act of the will to confer symbolic baptism and this was his predominant intention, the baptism will likewise be invalid."[2] It is my opinion that in the baptism of John the non-Catholic minister definitely had the predominant intention to confer symbolic baptism; and, therefore, the baptism of John is invalid.

It seems to me that the doubt concerning John's baptism can be overcome, and hence there is no need to have recourse to the Holy See. We can proceed with a Pauline Privilege case.

[1] Cf. THE JURIST, X (1950), 235.

[2] Cf. "Bearing of Non-Catholic Baptisms on Matrimonial Causes"—THE JURIST, XI (1951), 203.

However, I would appreciate it very much if you could send me your opinion, particularly on the validity of John's baptism.

UNICITAS

In the question proposed in this case regarding the intention of the Baptist minister to confer baptism only as an outward sign of profession of faith in Jesus Christ and its relation to a decision needed in a Pauline Privilege case, the solution depends upon the value of the minister's statement as to his intention at the moment when he conferred the particular baptism that is involved in the case. The minister's general belief regarding baptism does not prevent his having an intention of conferring baptism according to the intention of Christ unless it becomes a particular element of the particular act of baptizing in a given case.

It is believed that a risk would be involved in accepting the sole testimony of the minister that in the given case he so particularized his general belief as to cause him to perform merely a symbolic rite without the effects of the Sacrament of Baptism. In other words, his testimony might be regarded as insufficient to remove the doubt about the validity of the particular baptism conferred by him. This risk seems the more evident because of the statement of the presumption in the response of December 28, 1949, when related to the reservation in the decree of June 10, 1937, by which the Holy Office provided that when a doubtful baptism enters the case, a decision regarding the use of the Pauline Privilege can be given only by that Supreme Sacred Congregation.

JEROME D. HANNAN

THE CATHOLIC UNIVERSITY OF AMERICA

# Decrees and Decisions

## CANONICAL

### RELIGION, OUR MOST VITAL NATIONAL ASSET *

As Bishops of the Catholic Church, we are intensely concerned that the teachings of Jesus Christ, Our Lord and God, will bless and sanctify our country. As American citizens our concern extends to those blessings which only true religion can bring to our beloved land. Our national spiritual assets must be even greater than the national material assets which are so evident everywhere. These material assets have brought a standard of living and a degree of comfort never before attained by so many people in any nation. With them has come a position of pre-eminence in the world hitherto unachieved by peaceful means. In the wake of such unprecedented prosperity a deep sense of security, a national optimism might have been expected. In its stead the temper of the country would seem to be one of restless foreboding and deep insecurity.

It cannot be denied that this gloomy and depressing atmosphere is largely a reflection of so much suffering and hopelessness in other parts of the world. Yet it must be affirmed with equal insistence that there is a lowering of vitality in our social institutions, a deplorable pessimism that signals the presence of a cause as dangerous as it is profound. The history of nations teaches us that ultimately it is spiritual losses rather than material reverses that lead to moral bankruptcy and national ruin. Across the centuries, strewn with the wreckage of once flourishing realms, the words of the Lord of Nations echo a warning in our ears: "Seek first the Kingdom of God and His justice and all these things shall be given you besides." The corollary is inescapable: "If you seek not the Kingdom of God, all these things will be taken from you."

Religion makes man a citizen of the Kingdom of God; for it is through religion that man gives his allegiance to his Master. Viewed

* Statement issued by the Hierarchy of the United States at its November 1952 Meeting.

in its entirety, religion is the system of beliefs and practices by which man comes to the knowledge of the one true God, by which he gives to God the worship that is His due, by which he renders thanks for all he is and has, acknowledges and expiates his own guilt, and begs the grace that makes it possible for him to attain his true destiny. As an act, religion is the communion of man with God, the source of all life. It is this that explains the essential importance of religion to man both as an individual and a member of society, a citizen of a nation. Religion, then, is not only the individual's most precious possession, it is also a nation's most vital asset.

### Man's Need of Religion

Man, as an individual, needs religion. He needs it for many reasons. He needs it because he is a creature of God, entirely dependent on his Creator, and hence must acknowledge his obligation of adoration and love. He needs it to give meaning to his present existence; for without religion this life, with its disappointments, its uncertainty, its cruelty, and its suffering, becomes " but a walking shadow, a poor player that struts and frets his hour upon the stage and then is heard no more . . . a tale told by an idiot full of sound and fury, signifying nothing." Again, man needs religion to give him that sense of responsibility which prevents human existence from becoming a wilderness of warring passions and aimless strivings. He needs religion because, apart from God, man is lonely and he can never find in himself or in the institutions that bear his image the means to fill up that void of loneliness which is in the human heart. Man needs religion because he is weak, and in his weakness he must have access to the source of all strength. Man needs religion because, without the hope that religion alone can give, he cannot rise above that pessimism, that sense of despair, which threaten to engulf the whole of our civilization. Man needs religion because he has an impelling need to worship, and if he does not worship God he will direct his worship to base objects that will pervert his mind and heart.

### Fundamental Need of Society

Religion, necessary to individual man, is necessary also to human society. From the very beginning the family, the primary unit of society, has been intimately dependent on religion, and from it has

drawn its unity, its stability, and its holiness. Apart from its divine origin and sanction, parental authority, upon which the family is founded, becomes but an arbitrary application of force to be superseded by any stronger power. Where religion has grown weak the family has shown a corresponding tendency to disintegrate. When religion remains strong, it stands as a protective armor, safeguarding both individual and family: Unique as a compelling ideal is the Holy Family of Nazareth with the striking lessons of love and obedience it teaches. More than the knowledge of all the abstract principles of ethics and sociology, the example of this perfect fulfillment of God's plan has through the Christian tradition strengthened and protected the primary unit of society.

Nor is the civic community less dependent on religion. Men are indeed forced by the conditions of human nature to unite and cooperate in the fulfillment of their common needs. But union and co-operation can continue to exist among free men only when justice and charity, universal in their binding force because imposed by God Himself, are embodied in law. Although civic authority may have its immediate source in the consent of the governed, that authority must be recognized as coming ultimately from Him upon whom all men depend. Unless religion with its binding force in justice and charity supplies the foundation of law and authority, there remains only human convention or brute force as the unifying element in society. In the last analysis there is no society of free men without the creative and sustaining force of religion. Civic society receives its most effective support from Him who taught us to render to Caesar the things that are Caesar's and to God the things that are God's.

### Without Religion Tyranny Rules

Nor is religion less important to the complex modern State than to the more primitive social structures. In the measure the State has excluded religion, it has shown a tendency to become an instrument of tyranny. The irreligious State sets itself up in the place of God, substituting its own arbitrary dictates for the decrees of eternal Wisdom. It demands an absolute loyalty such as can be claimed only by Truth itself, and it has no effective deterrent from violating its solemn treaties and from waging unjust and aggressive wars. Since religion is what contemporary tyrannies are attempting

first to shackle and then to destroy, one can rightly conclude that it is the one thing most necessary for the preservation of free nations.

Religion, then, is of the utmost importance to society in all its aspects and in all its stages of development. It is like the rays of the sun, bringing the light of God's wisdom and grace into man's whole social life. It lights up and purifies the City of Man and turns it into the City of God. Without these sustaining influences, the City of Man is gradually overrun by a Mayan-like jungle of human passions, in whose rank undergrowth of greed and cruelty and every other vice man lives his life in terror—and in the end perishes.

### Religious Influence in U. S. Traditions

All society, particularly our own, is intimately dependent on religion. In the beginning of our own nation, at the very time when the revolutionary movement on the continent of Europe was planning to destroy all influence of religion on public life, it is a remarkable fact that our Founding Fathers based their own revolutionary action on the rights inherent in man as a creature of God, and placed their trust in His divine providence. The concept of man that they set forth in the Declaration of Independence, and on which they based the Constitution and our Bill of Rights, is essentially a religious concept—a concept inherited from Christian tradition. Human equality stems from the fact that all men have been created by God and equally endowed by Him with rights rooted in human nature itself. Against any other background, human equality has no meaning. Freedom, too, is essentially bound up with the religious concept of man. In any context that separates man from the creative and sustaining Hand of God, there can be no freedom. The same is true of all man's inalienable rights. The enjoyment of such rights is safe only in a society that acknowledges the supreme and omnipotent God. The whole idea of government, dedicated to the welfare of the human person in the common good and subject to God's eternal law, is derived from the religious concepts of man and society which our founders inherited from their Christian tradition.

The founders of this country were deeply conscious of this debt to religion. The long deliberations to which they submitted the First Amendment to the Constitution and the many revisions it

underwent before adoption bear witness to the important place religion occupied in the minds of the first Congress. Certainly it was not their purpose to eliminate the influence of religion on public life. On the contrary it was their intention to guarantee to religion its essential freedom. In a country of divided religious allegiance, the Federal government was indeed prohibited from setting up any established religion but it was also prohibited from interfering in any way with any religious institution or with the freedom of the individual in the practice of the religion of his conscientious choice. That nothing other than this was intended, that the Federal government was not prevented from encouraging and even aiding religion, so long as no particular form of religion should be established by the State, is clear not only from the wording of the First Amendment but also from the fact that from the beginning, under the Constitution and its amendments, many practices have flourished which have continued to give great help to religion.

### Not Indifferent to Religion

Apart from the record of deliberation and the wording of the First Amendment itself, there is abundant evidence that this carefully thought out solution was not indicative of indifference and still less of hostility to religion. Both the Northwest and Southwest Ordinances, passed by the very men who were responsible for the amendment, speak of religion and morality as "necessary for good government and the happiness of mankind." And even more pointed are the words used by our first President in his Farewell Address: "Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports. . . . Reason and experience both forbid us to expect that national morality can prevail in exclusion of religious principle."

Such were the prevailing convictions of the founders of this country. Such too were the traditions that have in large measure determined the course of its development. No one has better expressed American traditions or has contributed more to their development than Abraham Lincoln. Eight times during the term of his presidency he issued proclamations of thanksgiving and of days of prayer and fasting that strongly emphasize this nation's need of religion. The proclamation of March 30, 1863, seems even more pertinent today than it was at the time it was issued. "We have

been the recipients of the choicest bounties of heaven; we have been preserved, these many years, in peace and prosperity . . . but we have forgotten God. We have forgotten the gracious hand which preserved us in peace, and multiplied and enriched and strengthened us; and we have vainly imagined, in the deceitfulness of our hearts, that all these blessings were produced by some superior wisdom and virtue of our own. Intoxicated with unbroken success, we have become too self-sufficient to feel the necessity of redeeming and preserving grace, too proud to pray to the God that made us."

### Threat of Secularism

These words of Lincoln not only recall to us our national traditions relative to the importance of religion; they also remind us of the constant temptation for this country to turn away from God and to become immersed in material pursuits. In our day widespread yielding to this temptation has given rise to an even greater danger—the way of life we call secularism. Those who follow this way of life distort and blot out our religious traditions, and seek to remove all influence of religion from public life. Their main efforts are centered on the divorce of religion from education. Their strategy seems to be: First to secularize completely the public school and then to claim for it a total monopoly of education.

To teach moral and spiritual values divorced from religion and based solely on social convention as these men claim to do is not enough. Unless man's conscience is enlightened by the knowledge of principles that express God's law, there can be no firm and lasting morality. Without religion, morality becomes simply a matter of individual taste, of public opinion or majority vote. The moral law must derive its validity and its binding force from the truths of religion. Without religious education, moral education is impossible.

In criticizing this secularist trend in education, let it not be said that we are enemies of public education. We recognize that the State has a legitimate and even necessary concern with education. But if religion is important to good citizenship—and that is the burden of our national tradition—then the State must give recognition to its importance in public education. The State, therefore, has the duty to help parents fulfill their task of religious instruction and training. When the State fails in this help, when it makes the task more difficult and even penalizes parents who try to fulfill this

duty according to conscience, by depriving their children of their right under our Federal Constitution to auxiliary services, this can only be regarded as an utterly unfair and short-sighted policy.

### Religious Education Is Unifying Force

Even more alarming are the efforts to create a monopoly of education for a secularized public school. To one who cherishes the American tradition, it is alarming to hear all nonpublic education denounced as divisive. Not all differences are divisive, and not all divisions are harmful. There are political and social differences and divisions that are simply manifestations of our fundamental freedom. The differences that are harmful to our country are those which divide our people in their duty of loyalty, patriotism, and good citizenship. Education of children in schools under religious auspices has no such effect. On the contrary, the religious instruction children receive in such schools inculcates the duties of loyalty, patriotism, and civic service based on love of God, of neighbor, and of country. Education that is truly religious is then a unifying rather than a dividing force.

Particularly difficult to understand is the attitude of some few, who, although occupying positions of leadership in various religious groups, yet, in almost every question involving the influence of religion in public life and education, throw the weight of their influence behind secularism. In the days when Communism was posing as a new and advanced kind of democracy, some of these persons were loud in their praise of practically everything that came out of the realms of atheism and tyranny. Now that it is no longer fashionable to regard Communism as other than the avowed enemy of our own country, they indeed maintain a discreet silence on the subject of Communistic virtues, but they still throw the weight of their influence behind such totalitarian movements as an all-embracing state-controlled school system and education completely devoid of religion. Although they often lay claim to the title of Christian, they are rather devotees of the pseudo-religion of progress; and they always think of progress in terms of materialistic or secularistic evolution. Consciously or unconsciously, in eliminating the influence of religion and in working for the absolutism of majority vote, they are promoting the disintegration of those social institutions whose foundations are in religion—freedom, equality, human dig-

nity, the stable family, and that constitutional democracy which has been characteristic of this country.

### Irreligion Real Danger

The real danger to our country comes not from any division likely to result from religious education or profession. It comes rather from the threatening disintegration of our social life, because of the weakening of religion as a constructive force. With the decline of religious belief, the increase of divorce and of family disintegration has become a national scandal. With the break-up of the family, juvenile delinquency has shown an alarming increase. Consequent upon the weakening of religion there has been a lowering of moral standards that has resulted in public corruption—and this in turn threatens all respect for law and public authority. The imminent threat to our country comes not from religious divisiveness but from irreligious social decay. The truly religious man is certain to be one who treasures all those ideals which religion helped to build into this nation. To the man who is lacking in religious belief, nothing in the end is likely to be sacred, nothing worth preserving. In that direction lies the real danger to our country.

### Obligations of a Religious People

Although there have been many evidences of the weakening of religion among our people, in recent times there have ben unmistakable signs of a renewed religious interest. The number of religious books that have attained wide circulation, the frequent serious discussion of religious topics in the daily papers and influential periodicals, the reported increase everywhere in church attendance, the frequent and effective use of radio and television for religious programs—all these are encouraging signs. The vitality of the religious tradition in our country, moreover, has recently been attested by the Supreme Court, when in its majority opinion it stated that "we are a religious people whose institutions presuppose a Supreme Being," and when it declared that "when the State encourages religious instruction or co-operates with religious authorities . . . it follows the best of our traditions."

But our best religious traditions are not fulfilled by mere theoretical acknowledgment of religion as a possible aid in solving our problems, or by a perfunctory attendance at Sunday devotions, or even by a stiff bow on the part of government in the general direction of

God. If our country is truly religious, the influence of religion will permeate every part of our national life. The State will not merely tolerate religion; it will honor and welcome it as an indispensable aid in building the complete good life of its citizens—much as the influence of religion has been welcomed in our armed forces.

### State Must Uphold Moral Standards

In its internal and external affairs the State will uphold, and it will expect its citizens and its officials to uphold, that standard of morality which flows necessarily from belief in God and in God's law. From its own officials and employes it will demand an even stricter observance of the moral standard than it can enforce upon individual citizens or business institutions. In dealing with the latter, the State is often using its police power, rightly restricted by constitutional and other legal guarantees. In the case of public servants the State is dealing with individuals whose public employment is conditioned on their honesty, their honor, their truthfulness, their efficiency, and their devotion to the national welfare and the public good.

Religion requires that justice, tempered by charity, must prevail in the State's legislation and policy relative to economic groups. It will also inspire and guide the employer in the fulfillment of his duties toward his employes in the spirit of justice and charity. In the workingman's struggle for his rights, the religious conscience of the nation was not among the least of the forces that sustained him. Now that those rights have been largely vindicated, religion still insists on his responsibility to his employer and to society in the achievement of a right economic solidarity.

Religion will lead a nation not only to hold forth its bounty to the needy of other nations but also, in a spirit of charity and justice, to do its part to alleviate the plight of the homeless and dispossessed of other lands.

### Return to Life of Prayer

A religious people is a people that prays. If the spirit of religion has declined in our times, it is because many, immersed in worldly pursuits, have ceased to pray. Most earnestly, therefore, we urge a return to a life sanctified by prayer. But prayer itself can be effective only when it is the fruit of calm and ordered reflection on the

great spiritual realities that underlie our whole existence. Once the opportunity of such reflection was afforded largely by the reverent observance of Sunday, the day of the Lord. We call upon our people to return to the proper religious observance of the Lord's day and the practice of family prayer.

It is a cherished tradition for our government to call its citizens to prayer and public worship. Too often the proclamation of days of prayer, traditional in our country, has come to be regarded by many as a pious formality. The realization of the immeasurable benefits we have received from Almighty God, the further realization that only under God's guidance can we hope to solve our problems and overcome our perils, will restore to these days their sacred character. The truly religious observance of such days as our religious feasts and national holidays will deepen and enrich the spiritual life of the whole nation.

## Role of Christian Faith

One of the constant dangers to the religious spirit in a country such as ours is the tendency to regard religion itself simply as the fruit of pious sentiment; or to hold, as the doctrinal basis of religion, what we may call the common factor in the religious opinions held by various groups; or to be content with the great religious truths of the natural order which can be known by unaided human reason. It is true that the founders of this country, in their public utterances, gave as the religious foundation of their work only the truths of the natural order—belief in God as the Omnipotent Creator; belief in man as God's free creature endowed with inalienable rights; belief in the eternal truth and universality of the moral law.

But it is also true that these convictions were part of their Christian tradition. Historically these truths had been received and elaborated by intellects illumined by faith and guided by revelation. It would be wrong to imagine that these truths are sufficient for the religious life of the individual, or that they can of themselves guarantee the firm foundation of society. After all, the truths which can be known by reason are but a part of religious truth. It is through supernatural faith alone that man comes to the knowledge of religious truth in its fullness. Man is not free to pick and choose among the truths God has made known either through reason or revelation. His obligation is to accept the whole of God's truth.

Man himself is not merely a creature of the natural order. At the moment of creation he was elevated by God to the supernatural state and destined to an everlasting and supernatural life. To the fall of man from this high estate are traceable all the woes that have marked human history. To save man from the eternal consequences of his fall, to pay the penalty of his sins, and to restore him to his supernatural state and destiny, the Son of God became man, suffered and died on the Cross for the salvation of all mankind. In the accomplishment of the work of Redemption Christ has given us the fullness of God's revelation. To attain to his destiny, therefore, man needs not merely the truths that reason can discover; he needs also the truths that Christ has revealed; he needs the Church that Christ has established.

### Moral Life Based on Christian Faith

All the religious truths, natural and supernatural, are parts of one integral whole. Ultimately in man's mind they must stand or fall together. Subtract one part and you distort the rest; deny one part and in the end you deny the whole. Nor, in the light of divine revelation, can the principles of natural ethics be separated from the principles of Christian morality. Only the life of Christian faith can guarantee to man in his present state the moral life; and the Christian life is lived in its entirety only through the one true Church of Christ.

In our present-day world it has become clear that denial of supernatural truth tends finally to the denial of all religious truth. "I will show you the truth and the truth will make you free." In Christ's design truth and freedom stand together. If today Christianity stands for freedom, it is because Christianity is truth.

Signed by the members of the Administrative Board, National Catholic Welfare Conference, in the names of the Bishops of the United States: Edward Cardinal Mooney, Archbishop of Detroit; Samuel Cardinal Stritch, Archbishop of Chicago; Francis Cardinal Spellman, Archbishop of New York; Francis P. Keough, Archbishop of Baltimore; John J. Mitty, Archbishop of San Francisco; Richard J. Cushing, Archbishop of Boston; Joseph E. Ritter, Archbishop of St. Louis; Patrick A. O'Boyle, Archbishop of Washington; Karl J. Alter, Archbishop of Cincinnati; John F. Noll, Bishop of Fort Wayne; Emmet M. Walsh, Coadjutor Bishop of Youngstown; Thomas K. Gorman, Coadjutor Bishop of Dallas; Matthew F. Brady, Bishop of Manchester.

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SANCTISSIMI DOMINI NOSTRI

PII DIVINA PROVIDENTIA PAPAE XII

## *CONSTITUTIO APOSTOLICA*

*De disciplina servanda quoad ieiunium eucharisticum*

PIUS EPISCOPUS

SERVUS SERVORUM DEI AD PERPETUAM REI MEMORIAM

Christus Dominus, "in qua nocte tradebatur" (*1 Cor.* 11, 23), cum postrema vice veteris Legis celebravit Pascha, coena facta (cfr. *Luc.* 22, 20), panem dedit discipulis suis dicens: "Hoc est corpus meum, quod pro vobis tradetur" (*1 Cor.* 11, 24); itemque calicem eis porrexit asseverans: "Hic est sanguis meus novi testamenti, qui pro multis effundetur" (*Matth.* 26, 28), "Hoc facite in meam commemorationem" (cfr. *1 Cor.* 11, 24–25). Quibus ex Sacrarum Litterarum locis omnino patet Divinum Redemptorem ultimae huic paschali celebrationi, in qua agnus ex Hebraeorum ritibus manducabatur, voluisse substituere novum Pascha, ad saeculorum usque obitum permansurum, esum videlicet immaculati Agni, immolandi pro mundi vita, ita ut novum Pascha novae Legis Phase vetus terminaret, et umbram fugaret veritas (cfr. hymn, *Lauda Sion* [Missale Rom.]).

Quandoquidem autem utriusque coenae eiusmodi coniunctio idcirco habita fuit, ut ex antiquo Paschate ad novum significaretur transitus, facile perspici potest cur Ecclesia, in Eucharistico Sacrificio ex Divini Redemptoris iussu in eius commemorationem renovando, a veteris agapes more discedere potuerit, et Eucharisticum ieiunium in usum inducere.

Etenim inde ab antiquissima aetate consuetudo invaluit Eucharistiam christifidelibus ieiunis administrandi (cfr. Ben. XIV, *De Syn. Dioec.* l. 6. c. 8, n. 10). Saeculo autem exeunte quarto iam in variis Conciliis ieiunium iis praecipiebatur, qui Eucharisticum celebraturi essent Sacrificium. Itaque anno CCCLXXXXIII Hipponense Concilium haec decrevit: "Sacramenta altaris non nisi a ieiunis hominibus celebrentur" (Conc. Hipp. can. 28: *Mansi,* III, 923): quod praeceptum paulo post, hoc est anno CCCLXXXXVII, ex Carthaginensi Concilio III iisdem verbis edebatur (Conc. Carth. III, cap. 29: *Mansi,* III, 885); ac saeculo ineunte quinto haec consuetudo satis

communis et immemorabilis dici potest; quamobrem S. Augustinus affirmat sanctissimam Eucharistiam a ieiunis semper accipi itemque per universum orbem morem istum servari (cfr. S. August. *Ep. LIV ad Ian.* cap. 6: *Migne, PL,* XXXIII, 203).

Procul dubio haec agendi ratio gravissimis innitebatur causis, in quibus ea ante omnia memorari potest, quam Apostolus gentium lamentatur, cum de fraterna christianorum agape agit (cfr. *1 Cor.* 11, 21 sq.). Etenim cibo potuque se abstinere cum summa illa reverentia congruit, quam supremae Iesu Christi maiestati debemus, cum eum Eucharisticis delitescentem velis sumpturi sumus. Ac praeterea, dum, ante quodlibet alimentum, eius pretiosissimo Corpore ac Sanguine vescimur, luculenter demonstramus illud esse primum ac summum nutrimentum, quo animus alatur noster eiusque augeatur sanctitas. Quapropter idem Augustinus haec monet: " Placuit Spiritui Sancto ut in honorem tanti Sacramenti in os christiani prius Dominicum Corpus intraret, quam ceteri cibi " (S. August. l. c.).

Neque debitum solummodo honoris munus hoc ieiunium Divino tribuit Redemptori, sed pietatem etiam fovet; ideoque ad saluberrimos illos sanctitatis fructus augendos conferre potest, quos bonorum omnium fons et auctor Christus a nobis, gratia ditatis, elici postulat.

Nemo ceteroquin est, qui experiundo non agnoscat ex ipsis humanae naturae legibus contingere ut, cum corpus cibo oneratum non sit, mens erigatur agilior, atque impensiore moveatur virtute ad arcanum illud excelsumque meditandum mysterium, quod in animo, tamquam in templo, agitur, divinam adaugens caritatem.

Quanta cura Ecclesia Eucharisticum ieiunium servandum curaverit ex eo etiam erui potest, quod illud, gravibus quoque poenis violatoribus impositis, imperavit. Etenim Concilium Toletanum VII, anno DCXXXXVI, excommunicationem ei comminatum est, qui non ieiunus sacris fuisset operatus (Conc. Tolet. VII, cap. 2: *Mansi,* X, 768); anno autem DLXXII Concilium Bracarense III (Conc. Bracar. III, can. 10: *Mansi,* IX, 841), et anno DLXXXV Concilium Matisconense II (Conc. Matiscon. II, can. 6: *Mansi,* IX, 952) iam decreverant eum, qui huius rei evasisset reus, de sui muneris honorisque sede deponendum esse.

Attamen volventibus saeculis, illud quoque diligenter consideratum est, interdum nempe esse opportunum, ob peculiaria rerum adiuncta, hanc ieiunii legem, ad christifideles quod attinet, aliquatenus

relaxare. Quam ad rem Constantiae Concilium, anno MCCCCXV, dum eiusmodi sacrosanctam legem confirmat, addit quoque quoddam temperamentum: ". . . sacrorum canonum auctoritas, laudabilis et approbata consuetudo Ecclesiae servavit et servat, quod huiusmodi sacramentum non debet confici post coenam, neque a fidelibus recipi non ieiunis, nisi in casu infirmitatis aut alterius necessitatis a iure vel Ecclesia concesso vel admisso" (Conc. Constant. sess. XIII: *Mansi*, XXVII, 727).

Placuit haec in memoriam ea de causa reducere, ut omnes perspectum habeant Nos, quamvis novae temporum rerumque condiciones suadeant ut non paucas facultates ac venias hac in re concedamus, velle tamen per Apostolicās has Litteras summam huius legis consuetudinisque vim confirmare ad Eucharisticum quod attinet ieiunium; ac velle etiam eos admonere, qui eidem legi obtemperare queant, ut id facere pergant diligenter, ita quidem ut ii solummodo, qui in necessitate versentur, hisce concessionibus frui possint secundum eiusdem necessitatis rationes.

Suavissimo Nos solacio afficimur—quod libet heic, etsi breviter, declarare—cum pietatem cernimus erga Augustum altaris Sacramentum cotidie magis increbrescere non modo in christifidelium animis, sed ad divini cultus etiam splendorem quod pertinet, qui ex publicis populorum manifestationibus saepenumero emicat. Quam ad rem haud parum procul dubio contulere sollicitae Summorum Pontificum curae, ac praesertim Beati Pii X, qui quidem, ad priscam Ecclesiae consuetudinem renovandam omnes advocans, eos adhortatus est, ut quam creberrime, immo cotidie si possent, ad Angelorum mensam accederent (S. Congr. Concilii, Decretum *Sacra Tridentina Synodus*, d. d. XX mensis Decembris, an. MCMV: *Acta S. Sedis*, XXXVIII, 400 sq.); ac parvulos quoque ad caeleste hoc pabulum invitans, sapienti consilio statuit praeceptum sacrae Confessionis sacraeque Communionis ad eos singulos universos spectare, qui iam ad rationis usum pervenissent (S. Congr. de Sacramentis, Decretum *Quam singulari*, d. d. VIII mensis Augusti, an. MCMX: *Acta Ap. Sedis*, II, p. 577 sq.); quod etiam in iuris canonici Codice sancitum est (C. I. C. can. 863; cfr. can. 854, § 5). Hisce Summorum Pontificum curis christifideles ultro libenterque respondentes, ad sacram Synaxim frequentiores usque accessere. Atque utinam haec caelestis Panis fames divinique Sanguinis sitis in omnibus cuiusvis aetatis hominibus in omnibusque civium ordinibus exardescant!

Animadvertendum tamen est ea quibus vivimus tempora eorumque peculiares condiciones multa in societatis usum in communisque vitae actionem induxisse, ex quibus graves difficultates oriantur, quae possint homines a divinis participandis mysteriis abstrahere, si Eucharistici ieiunii legi eo prorsus modo ab omnibus obtemperandum sit, quo ad praesens usque tempus obtemperandum erat.

Imprimisque patet omnibus clerum hodie ingravescentibus christianorum necessitatibus numero imparem esse; qui quidem festis praesertim diebus nimium saepe laborem tolerare debet, cum serius Eucharisticum Sacrificium ac non raro etiam bis vel ter celebrare debeat, cumque interdum officio quoque teneatur longinquum faciendi iter, ut sacra ne desint haud parvis sui gregis partibus. Enervantes eiusmodi apostolici labores sacerdotum valetudinum procul dubio debilitant; idque eo vel magis quod non modo Missae litandae cum Evangelii explicatione, itemque sacris Confessionibus audiendis, catechesi impertiendae, ceterisque sui muneris partibus increscenti studio increscentique opera vacare debent, sed iis etiam rationibus rebusque diligenter prospicere ac consulere, quas asperum illud certamen adversus Deum eiusque Ecclesiam postulat, tam late hodie, tam callide acriterque excitatum.

At mens animusque noster ad eos potissimum advolat, qui procul a patria cuiusque sua, in longinquis operantes terris, huic Divini Magistri invitationi iussionique generosi responderunt: "Euntes ergo docete omnes gentes" (*Matth.* 28, 19); ad Evangelii praecones dicimus, qui gravissimis etiam exantlatis laboribus atque itinerum difficultatibus omne genus superatis, eo omni nisu contendunt, ut christianae religionis lumen omnibus pro facultate affulgeat, utque suos greges, saepenumero a catholica suscepta fide adhuc recentes, angelico illo enutriant cibo, qui virtutem alat pietatemque refoveat.

Iisdem fere in rerum adiunctis ii quoque christifideles versantur, qui vel in non paucis regionibus a catholicis Missionalibus excultis, vel in aliis locis commorantes, cum proprium apud se non habeant sacrorum administrum, alterius sacerdotis adventum in seras horas exspectare debent, ut Eucharisticum participare queant Sacrificium, seseque divino enutrire pabulo.

Ac praeterea, postquam machinae omne genus in usum inductae fuere, saepissime contingit ut opifices non pauci vel officinis, vel vehicularibus maritimisque muneribus, vel aliis publicae utilitatis officiis addicti, non modo per diem sed per noctem etiam alternis

iteratisque laboris vicibus occupentur, ita quidem ut debilitatae eorum vires eos interdum compellere possint ad aliquid nutrimenti accipiendum, atque adeo iidem impediantur quominus ad Eucharisticam mensam ieiuni accedant.

Ad hanc eamdem mensam matres quoque familias saepenumero venire nequeunt, antequam domesticis curis prospexerint, quae multas saepe ab eis postulant laboris horas.

Parique modo evenit ut in puerorum puellarumque scholis ac litterarum ludis plurimi habeantur, qui divino illi invitamento respondere cupiant: " Sinite parvulos venire ad me " (*Marc.* 10, 14), cum fore omnino confidant ut ille, qui " pascitur inter lilia " (*Cant.* 2, 16; 6, 2) suum ipsorum animi candorem morumque integritatem contra iuvenilis aetatis illecebras ac mundi insidias tutetur; verumtamen perdifficile interdum iisdem est, antequam ad scholam se conferant, sacras adire aedes ibique sese Angelico enutrire Pane, postea vero domum redire ut necessarium suscipiant nutrimentum.

Hoc praeterea animadvertendum est saepe hodie contingere ut frequentissimae populi multitudines ex alio ad alium locum postmeridianis horis ea de causa transgrediantur, ut religiosas celebrationes, vel coetus de re sociali habendos participent; si igitur hisce etiam datis occasionibus liceat Eucharisticum peragere Mysterium, quod divinae gratiae vitalis fons est voluntatesque iubet ad virtutem adipiscendam exardescere, haud dubium est inde vim hauriri posse, qua omnes ad christiane penitus sentiendum operandumque excitentur, et ad legitimis etiam obtemperandum legibus.

Peculiaribus hisce considerationibus haec adicere opportunum videtur, quae ad omnes spectant; quamvis nempe nostris hisce temporibus ars medica ac disciplina illa, quae hygiene dicitur, tantos progressus fecerint, tantumque contulerint ad mortuorum numerum in puerili praesertim aetate minuendum, nihilo secius praesentis vitae condiciones atque ea, quae ex immanibus huius saeculi bellis consecuta sunt incommoda, eiusmodi sunt, ut non parum corporum constitutionem valetudinemque debilitaverint.

Hisce de causis, quo praesertim experrecta in Eucharistiam pietas facilius augeatur, e variis Nationibus Episcopi non pauci, officiosis datis litteris petiere, ut haec ieiunii lex aliquantulum mitigaretur; atque iam haec Apostolica Sedes peculiares hac in re facultates ac venias sacrorum administris ac christifidelibus benigne concessit. Ad quas concessiones quod attinet, memorare libet Decretum, quod

*Post Editum* inscribitur, a S. Congregatione Concilii die VII mensis Decembris, anno MCMVI, pro infirmis datum (*Acta S. Sedis*, XXXIX, p. 603 sq.); ac Litteras die XXII mensis Maii, anno MCMXXIII, Locorum Ordinariis a S. S. C. S. Officii pro sacerdotibus datas (S. S. Congregationis S. Officii Litterae locorum Ordinariis datae super ieiunio eucharistico ante Missam: *Acta Ap. Sedis*, XV, p. 151, sq.).

Postremis hisce temporibus, Episcoporum hac de re petitiones crebriores impensioresque fuere, atque ampliores pariter fuerunt facultates concessae, eae potissimum quae belli occasione dilargitae sunt. Id procul dubio luculenter indicat novas, graves, non intermissas ac satis generales exstare causas, quibus nimis difficile sit, multiplicibus in rerum adiunctis, cum sacerdotes Eucharisticum sacrificium celebrare, tum christifideles Angelico vesci Pane ieiunos.

Quamobrem, ut gravibus hisce incommodis ac difficultatibus occurramus, utque indultorum diversitas in actionum discrepantiam ne cedat, necessarium ducimus Eucharistici ieiunii disciplinam ita mitigando statuere, ut, quam largissime fieri potest, in peculiaribus etiam temporum locorum ac christifidelium condicionibus, eiusmodi legi omnes obtemperare facilius queant. Haec Nos decernentes, fore confidimus ut haud parum conferre possimus ad Eucharisticae pietatis incrementum, atque adeo aptius permovere atque excitare omnes ad Angelorum participandam Mensam, adaucta procul dubio Dei gloria ac Mystici Iesu Christi Corporis sanctimonia.

Haec igitur omnia, quae sequuntur, Apostolica auctoritate Nostra decernimus ac statuimus:

NORMA I. Ieiunii eucharistici lex, a media nocte pro iis omnibus vigere pergit, qui in peculiaribus condicionibus non versentur, quas per Apostolicas has Litteras exposituri sumus. Principium tamen generale et commune omnibus in posterum esto, sive sacerdotibus, sive christifidelibus: aquam videlicet naturalem Eucharisticum ieiunium non frangere.

NORMA II. Infirmi, etiamsi non decumbant, aliquid sumere possunt, de prudenti confessarii consilio, per modum potus, vel verae medicinae, exceptis alcoholicis. Eadem facultas sacerdotibus infirmis conceditur Missam celebraturis.

NORMA III. Sacerdotes, qui vel tardioribus horis, vel post gravem sacri ministerii laborem, vel post longum iter celebraturi sunt, aliquid sumere possunt per modum potus, exclusis alcoholicis; a quo tamen se abstineant saltem per spatium unius horae, ante quam sacris operentur.

Norma IV. Qui autem bis, vel ter Missam celebrent, ablutiones sumere possunt, quae tamen, in hoc casu, non vino, sed aqua tantum fieri debent.

Norma V. Christifideles pariter, etiamsi non infirmi, qui ob grave incommodum—hoc est, ob debilitantem laborem, ob tardiores horas, quibus tantum ad Sacram Synaxim accedere possint, vel ob longinquum iter, quod suscipere debeant—ad Eucharisticam mensam omnino ieiuni adire nequeant, de prudenti confessarii consilio, hac perdurante necessitate, aliquid sumere possunt per modum potus, exclusis alcoholicis; a quo tamen se abstineant saltem per spatium unius horae, antequam Angelico enutriantur Pane.

Norma VI. Si rerum adiuncta id necessario postulant, locorum Ordinariis concedimus ut Missae celebrationem vespertinis, ut diximus, horis permittere queant, ita tamen ut haec initium non habeat ante horam IV post meridiem, sive in festis de praecepto, quae adhuc vigent, sive in illis quae olim viguerunt, sive primis uniuscuiusque mensis feriis sextis, sive denique in illis sollemnibus, quae cum magno populi concursu celebrentur, atque etiam, praeter hos dies, semel in hebdomada, servato a sacerdote ieiunio trium horarum quoad cibum solidum et potus alcoholicos, unius autem horae quoad ceteros potus non alcoholicos. In his autem Missis christifideles ad Sacram Synaxim accedere poterunt, hac eadem servata norma ad ieiunium Eucharisticum quod attinet, firmo praescripto can. 857.

Evangelii autem praeconibus, in territoriis Missionum, peculiarissimis perpensis condicionibus in quibus versantur, ob quas raro plerumque habentur sacerdotes, qui longinquas stationes invisere queant, Locorum Ordinarii eiusmodi facultates concedere poterunt ceteris etiam hebdomadis diebus.

Locorum tamen Ordinarii diligenter curent, ut quaelibet vitetur interpretatio, quae concessas facultates amplificet, utque ab omni abusu et irreverentia hac in re caveatur; in hisce enim dilargiendis facultatibus, quas hominum, locorum temporumque condiciones hodie postulant, Nos etiam atque etiam volumus Eucharistici ieiunii momentum, vim atque efficacitatem confirmare ad eos quod attinet, qui Divinum Redemptorem sub Eucharisticis velis latentem accepturi sunt. Ac praeterea, quotiescumque corporis incommodum minuitur, animus debet pro facultate rem supplere, sive interna paenitentia, sive aliis modis, ex tradito Ecclesiae more; quae quidem cum ieiunium mitigat, alia opera adimplenda imperare solet. Qui igitur

datis hac in re facultatibus perfrui queant, impensiores ad Caelum admoveant preces, quibus Deum adorent, eidem grates agant, ac praesertim admissa expient novaque impetrent superna auxilia. Cum omnes perspectum habeant oporteat Eucharistiam " tamquam passionis suae memoriale perenne " (S. Thom. *Opusc. LVII,* Offic. de Festo Corporis Christi, lect. IV, *Opera Omnia,* Romae, MDLXX, vol. XVII) a Iesu Christo institutam fuisse, ex animis sensus illos eliciant christianae humilitatis christianaeque paenitentiae, quos Divini Redemptoris cruciatuum ac mortis meditatio excitare debet. Itemque eidem Divino Redemptori, qui, perpetuo in altaribus se immolans, maximum renovat sui amoris documentum, adauctos offerant omnes suae erga proximos caritatis fructus. Hac profecto ratione conferent omnes ad illud Apostoli gentium cotidie magis explendum: " Unus panis, unum corpus multi sumus, omnes qui de uno pane participamus " (*1 Cor.* 10, 17).

Quaecumque autem hisce Litteris decreta continentur, ea omnia stabilia, rata ac valida esse volumus, contrariis quibuslibet non obstantibus, peculiarissima etiam mentione dignis; atque abolitis ceteris omnibus privilegiis ac facultatibus, quomodocumque a Sancta Sede concessis, ut ubique omnes hanc disciplinam aeque riteque servent.

Quae quidem omnia, supra statuta, vim suam obtineant a promulgationis die per *Acta Apostolicae Sedis* factae.

Datum Romae, apud S. Petrum, anno Domini millesimo nongentesimo quinquagesimo tertio, die sexta mensis Ianuarii, in Epiphania Domini, Pontificatus Nostri anno quarto decimo.

PIUS PP. XII

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## THE APOSTOLIC CONSTITUTION CONCERNING THE DISCIPLINE TO BE OBSERVED WITH RESPECT TO THE EUCHARISTIC FAST

### PIUS, BISHOP,

SERVANT OF THE SERVANTS OF GOD
FOR AN EVERLASTING REMEMBRANCE

Christ the Lord " on the night in which He was betrayed " (I Cor., 11:23) when for the last time He kept the Pasch of the old law, after He had supped (cf. Luke, 22:20) gave bread to His dis-

ciples, saying: "This is My Body which shall be given up for you" (I Cor., 11:24); and He likewise presented the chalice to them saying: "This is my blood of the new covenant, which is being shed for many" (Matt., 26:28), "Do this in remembrance of me" (cf. I Cor., 11:24 f.). From these passages out of Holy Scripture it is completely obvious that our Divine Redeemer wished to substitute, in place of this final Passover ceremony in which a lamb was eaten according to the rite of the Hebrews, a new Pasch which would endure until the end of the world, that is, the eating of the Immaculate Lamb who was to be immolated for the life of the world. Thus the new Pasch of the new law put an end to the old Passover and the truth emerged from the shadow (cf. the Hymn "Lauda Sion" in the Roman Missal).

But since the conjoining of the two suppers was so arranged as to signify the transfer from the old Pasch to the new, it is easy to see why the Church, in renewing the Eucharistic Sacrifice at the command of the Divine Redeemer and in commemoration of Him, could depart from the custom of the ancient love-feast and introduce the Eucharistic fast.

From the very earliest time the custom was observed of administering the Eucharist to the faithful who were fasting (cf. Pope Benedict XIV, *De synodo diocesana*, 6, cap. 8, n. 10). Towards the end of the fourth century fasting was prescribed by many Councils for those who were going to celebrate the Eucharistic Sacrifice. So it was that the Council of Hippo in the year 393 issued this decree: "The Sacrament of the altar shall be offered only by those who are fasting" (Conc. Hipp., can. 28: Mansi, III, 923). Shortly afterwards, in the year 397, the Third Council of Carthage issued this same command, using the very same words (Conc. Carth. III, cap. 29: Mansi, III, 885). At the beginning of the fifth century this custom can be called quite common and immemorial. Hence St. Augustine affirms that the Holy Eucharist is always received by people who are fasting and likewise that this custom is observed throughout the entire world (cf. St. Augustine, Ep. 54, *Ad Jan.*, cap. 6: Migne, *PL*, 33, 203).

Doubtless this way of doing things was based upon very serious reasons, among which there can be mentioned first of all the one the Apostle of the Gentiles deplores when he is dealing with the brotherly love-feast of the Christians (cf. I Cor. 11:21 ff.). Absti-

nence from food and drink is in accord with that supreme reverence we owe to the supreme majesty of Jesus Christ when we are going to receive Him hidden under the veils of the Eucharist. And moreover, when we receive His precious Body and Blood before we take any food, we show clearly that this is the first and loftiest nourishment by which our soul is fed and its holiness increased. Hence the same St. Augustine gives this warning: "It has pleased the Holy Ghost that, to honor so great a Sacrament, the Lord's Body should enter the mouth of the Christian before other food" (St. Augustine, *loc. cit.*).

Not only does the Eucharistic fast pay due honor to our Divine Redeemer, it fosters piety also; and hence it can help to increase in us those most salutary fruits of holiness which Christ, the Source and Author of all good, wishes us who are enriched by His grace to bring forth.

Moreover, everyone with experience will recognize that, by the very laws of human nature, when the body is not weighted down by food the mind more easily is lifted up and is by a more ardent virtue moved to meditate upon that hidden and transcendent Mystery that works in the soul, as in a temple, to the increase of divine charity.

The solicitude of the Church for the preservation of the Eucharistic fast may be perceived also from the fact that the Church, in decreeing this fast, imposed serious penalties for its violation. Thus the Seventh Council of Toledo in the year 646 threatened with excommunication anyone who should say Mass after having broken his fast (Conc. Tolet. VII, cap. 2: Mansi, X, 768). In the year 572 the Third Council of Braga (Conc. Bracar. III, can. 10: Mansi, IX, 841), and in the year 585 the Second Council of Macon (Conc. Matiscon. II, can. 6: Mansi, IX, 952) had already pronounced that anyone who incurred this guilt should be deposed from his office and deprived of his honors.

As time went by, however, on careful consideration it was sometimes judged opportune because of particular circumstances to relax in some measure this law of fasting as it affected the faithful. So it is that the Council of Constance, in the year 1415, while confirming the venerable law of fasting, somewhat moderated it: ". . . the authority of the sacred canons and the praiseworthy and approved custom of the Church have observed and do observe the following:

that Mass should not be said after the celebrant has taken food, nor should Holy Communion be received by the faithful without fasting, unless in case of illness or of some other necessity conceded or admitted by right or by the Church" (Conc. Constant. sess. XIII: Mansi, XXVII, 727).

It has pleased Us to recall these things so that all may understand that We, despite the fact that new conditions of the times and of affairs have moved Us to grant not a few faculties and favors on this subject, still wish through this Apostolic Letter to confirm the supreme force of the law and custom dealing with the Eucharistic fast; and that We wish also to admonish those who are able to observe that same law that they should continue diligently to observe it, so that only those who need these concessions can enjoy them according to the nature of their need.

We are most effectively consoled—and it is right to speak of this here, even though briefly—when We see that devotion to the Blessed Sacrament of the Altar is increasing day by day, not only in the souls of the faithful, but also in what has to do with the splendor of the divine worship, which has often been made evident in public popular demonstrations. The careful directions of Sovereign Pontiffs have doubtless contributed a great deal to this effect, and especially that of the Blessed Pius X who, summoning all to renew the primitive custom of the Church, urged them to receive the Bread of Angels very frequently, even daily if possible (S. Congr. Concilii, Decretum "Sacra Tridentina Synodus," Dec. 20, 1905: *Acta S. Sedis,* XXXVIII, 400 ff.). Inviting the little ones to this heavenly food, he wisely decreed that the precept of holy Confession and Holy Communion has reference to every one of those who have reached the use of reason (S. Congr. de Sac., Decretum "Quam singulari," Aug. 8, 1910: *AAS,* II, 577 ff.). This same rule is prescribed in the Code of Canon Law (CIC, can. 863; cf. can. 854, § 5). The faithful responding generously and willingly to these directions of the Sovereign Pontiffs, have approached ever more frequently to the sacred Table. May this hunger for the heavenly Bread and the thirst for the Sacred Blood burn in all men of every age and of every walk of life!

It should nevertheless be noted that the times in which we live and their peculiar conditions have brought many modifications in the habits of society and in the activities of common life. Out of

these there may arise serious difficulties which could keep men from partaking of the divine mysteries if the law of the Eucharistic fast is to be observed in the way in which it had to be observed up to the present time.

In the first place, it is evident to all that today the clergy are not sufficiently numerous to cope with the increasingly serious needs of the faithful. Especially on feast days they are subject to overwork, when they have to offer the Eucharistic Sacrifice at a late hour and frequently twice or three times the same day, and when at times they are forced to travel a great distance so as not to leave considerable portions of their flocks without Holy Mass. Such tiring apostolic work undoubtedly weakens the health of priests. This is all the more true because, over and above the offering of the Holy Mass and the explanation of the Gospel, they must likewise hear confessions, give catechetical instruction, devote ever-increasing care and take ever more pains in completing the duties of the other parts of their ministry. They must also diligently look after those matters that are demanded by the warfare against God and His Church, a warfare that has grown so widespread and bitter at the present time.

Now our mind and heart go out to those especially who, working far from their own native country in far distant lands, have generously answered the invitation and the command of the Lord: "Go, therefore, and make disciples of all nations." (Matt. 28: 19). We are speaking of the heralds of the Gospel who, overcoming the most difficult and multitudinous labors and all manner of difficulty in traveling, strive with all their might to have the light of the Christian religion illumine all, and to nourish their flocks, who but very recently received the Catholic faith, with the Bread of Angels which nourishes virtue and fosters piety.

Almost in the same situation are those Catholics who, living in many localities cared for by Catholic missionaries, or who, living in other places and not having among them their own priests, must wait until a late hour for the coming of another priest that they may partake of the Eucharist and nourish themselves with the divine food.

Furthermore, since the introduction of machines for every sort of use, it very often happens that many workers—in factories, or in the land and water transportation fields, or in other public utility

services—are employed not only during the day, but even during the night, in alternate shifts. As a result, their weakened condition compels them at times to take some nourishment. But, in this way, they are prevented from approaching the Eucharist fasting.

Mothers also are often unable to approach the Eucharist before they take care of their household duties, duties that demand of them many hours of work.

In the same way, it happens that there are many boys and girls in school who desire to respond to the divine invitation: " Let the little children come to me." (Mark 10, 14). They are entirely confident that " He who dwells among the lilies " will protect their innocence of soul and purity of life against the enticements to which youth is subjected, the snares of the world. But at times it is most difficult for them, before going to school, to go to church and be nourished with the Bread of Angels and then return home to partake of the food they need.

Furthermore, it should be noted that it often happens, at the present time, that great crowds of people travel from one place to another in the afternoon hours to take part in religious celebrations or to hold meetings on social questions. Now, if on these occasions it were allowed to offer the Eucharistic Sacrifice, which is the living Fruit of divine grace and which commands our will to burn with the desire of acquiring virtue, there is no doubt that strength could be drawn from this by which all would be stirred profoundly to think and act in a Christian manner and to obey legitimate laws.

To these special considerations it seems opportune to add some which have reference to all. Although in our days medical science and that study which is called hygiene have made great progress and have helped greatly to cut down the number of deaths, especially among the young, nevertheless conditions of life at the present time and the hardships which flow from the cruel wars of this century are of such nature that they have greatly weakened bodily constitution and health.

For these reasons, and especially so that renewed piety towards the Eucharist may be all the more readily increased, many Bishops from various countries have asked, in official letters, that this law of fast be somewhat mitigated. Actually, the Apostolic See has kindly granted special faculties and permissions, in this regard, to both priests and faithful. As regards these concessions, We can cite the

Decree, entitled, *Post Editum,* given for the sick by the Sacred Congregation of the Council, December 7, 1906 (*Acta S. Sedis,* XXXIX, p. 603 ff.); and the Letter of the 22nd of May, 1923, from the Sacred Congregation of the Holy Office to the local Ordinaries in favor of priests (S. S. Congregationis S. Officii Litterae Locorum Ordinariis datae super ieiunio eucharistico ante Missam: *AAS,* XV, p. 151 ff.).

In these latter days, the petitions of the Bishops have become more frequent and urgent, and the faculties granted were more ample, especially those that were bestowed in view of the war. This, without doubt, clearly indicates that there are new and grave reasons, reasons that are not occasional but rather general, because of which it is very difficult, in these diversified circumstances, both for the priest to celebrate the Eucharistic Sacrifice, and for the faithful to receive the Bread of Angels fasting.

Wherefore, that we may meet these grave inconveniences and difficulties, that the different indults may not lead to inconsistent practice, We have deemed it necessary to lay down the discipline of the Eucharistic fast, by mitigating it in such a way that, in the greatest manner possible, all, in view of the peculiar circumstances of time, place, and the faithful, may be able to fulfill this law more easily. We, by this decree, trust that We may be able to add not a little to the increase of Eucharistic piety, and in this way to move and stir up all to partake at the Table of the Angels. This, without doubt, will increase the glory of God and the holiness of the Mystical Body of Christ.

By Our Apostolic authority We decree and command all the following:

Rule I. The law of the Eucharistic fast from midnight continues in force for all of those who do not come under the special conditions which We are going to set forth in this Apostolic Letter. In the future it shall be a general and common principle for all, both priests and faithful, that natural water does not break the Eucharistic fast.

Rule II. The sick, even when they are not confined to bed, can, on the prudent advice of a confessor, take something in the form of beverage or of true medicine. This does not hold for alcoholic beverages. The same faculty is given to sick priests who are going to say Mass.

Rule III. Priests who are going to say Mass at late hours, or after onerous work of the sacred ministry, or after a long journey, can take something by way of beverage. They cannot take alcoholic beverages. They should abstain, however, for the space of one hour before they say Mass.

Rule IV. Those who say Mass twice or three times can consume the ablutions. In such cases, however, the ablution must be made with water alone, not with wine.

Rule V. Likewise the faithful, even those not sick, who by reason of some serious inconvenience—that is, by reason of tiring work, by reason of the late hours at which alone it is possible for them to attend Mass, or by reason of a long journey which they must take—could not approach the Eucharistic table completely fasting, can, on the advice of a prudent confessor, while the need lasts, take something to drink, to the exclusion of alcoholic beverages, but they must abstain at least for the space of one hour before they are nourished by the Bread of Angels.

Rule VI. If the circumstance calls for it as necessary, We grant to the local Ordinaries the right to permit the celebration of Mass in the evening, as we said, but in such wise that the Mass shall not begin before four o'clock in the afternoon, on holy days of obligation still observed, on those which formerly were observed, on the first Friday of every month, and also on those days on which solemn celebrations are held with a large attendance, and also, in addition to these days, on one day a week; with the requirement that the priest observe a fast of three hours from solid food and alcoholic beverages, and of one hour from non-alcoholic beverages. At these Masses the faithful may approach the Holy Table, observing the same rule as regards the Eucharistic fast, the presumption of Canon 857 remaining in force.

In mission territories, in consideration of the very unusual conditions there prevailing, on account of which it often happens that there are only a few priests to visit the distant missions, the local Ordinaries can grant to the preachers of the Gospel faculties to celebrate evening Masses on other days of the week also.

Local Ordinaries shall carefully see that every interpretation is avoided that would stretch these faculties and that all abuse and

irreverence in this matter is prevented. For in granting these faculties which the conditions of persons, places and times demand today, We ardently desire to emphasize the force and the value of the Eucharistic fast for those who are to receive our Divine Redeemer hidden under the Eucharistic veils. Besides, as often as the inconvenience of the body is diminished, the soul must supply as far as it can, either by internal penance or by other means, in accordance with the traditional custom of the Church which is wont to command other works to be done when it mitigates the fast. Hence, those who may enjoy the faculties granted in this matter should raise fervent prayers to heaven to adore God, to thank Him, and especially to expiate for sins and beg Him for new heavenly aid. Since all must recognize that the Eucharist " has been instituted as the permanent memorial of the Passion " (S. Thom., *Opusc.* LVII, Office for the Feast of Corpus Christi, 4th lesson: *Opera Omnia*, Rome, 1570, vol. XVII), let them from their hearts elicit those sentiments of Christian humility and Christian patience which meditation on the sufferings and death of our Divine Redeemer must arouse. Also, to our Divine Redeemer who, ever immolating Himself on our altars is repeating the greatest proof of His love, let all offer increased fruits of charity toward their neighbors. For this reason all shall co-operate toward daily fulfilling the words of the Apostle of the Gentiles: " Because the bread is one, we though many, are one body, all of us who partake of the one bread." (I Cor. 10: 17).

Whatever decrees are contained in this letter we wish to be stable, ratified and valid, notwithstanding anything to the contrary, even what may be worthy of most special mention. All other privileges and faculties, in whatever way they may have been granted by the Holy See, are abolished, so that all may everywhere properly and equally observe this legislation.

All that has been decreed above shall be in force from the day of promulgation through the *Acta Apostolicae Sedis*.

Given at St. Peter's in Rome, January 6, 1953, the Feast of the Epiphany, in the fourteenth year of our Pontificate.

Pope Pius XII.

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# THE SUPREME SACRED CONGREGATION OF THE HOLY OFFICE

## AN INSTRUCTION ON THE DISCIPLINE TO BE OBSERVED WITH REFERENCE TO THE EUCHARISTIC FAST

The Apostolic Constitution " Christus Dominus," issued today by the Sovereign Pontiff Pius XII happily reigning, grants several faculties and dispensations with respect to the observance of the law of the Eucharistic fast. It also confirms, in great measure and substantially, the rules of the Code of Canon Law (can. 808 and 858, § 1) for the priests and the faithful able to observe that law of the Eucharistic fast. Nevertheless, the favorable order of this Constitution, according to which natural water (that is, without the addition of any element) no longer breaks the Eucharistic fast (Const., Rule 1), is extended to these people also. But, with regard to the other concessions, these can be used only by priests and by the faithful who find themselves in the conditions described in the Constitution, or by those who say evening Masses or receive Holy Communion at such Masses authorized by the Ordinaries within the limits of the new faculties granted to them.

And so, in order that the rules with regard to such concessions may be observed uniformly everywhere, in order to avoid any interpretation which would make these faculties appear more extensive than they really are, and in order to prevent every abuse in this matter, this Supreme Sacred Congregation of the Holy Office, at the direction and by the command of the Sovereign Pontiff himself, has issued the following:

*With Regard to the Sick, Either the Priests or the Faithful*

(Rule II of the Constitution)

1) The faithful who are sick, even though not confined to bed, may take something in the form of beverage, though not an alcoholic beverage, if, by reason of their sickness they cannot, without real inconvenience, observe a complete fast up to the time they receive Holy Communion. They can also take something in the line of medicine, either liquid (but not alcoholic), or solid, as long as what they take is real medicine, prescribed by a physician or commonly esteemed as such. It must be noted that any solid taken as nourishment cannot be considered as medicine.

2) The conditions under which a person may be able to take advantage of this dispensation from the law of fasting for which no time limit preceding Holy Communion is prescribed must be judged very prudently by the confessor. Without his advice no one can use this dispensation. The confessor, however, can give his advice either when he is hearing confessions or privately apart from the confessional. He may also give this advice once so that the person to whom he gives it may always act upon it as long as the conditions of this same sickness last.

3) Sick priests, even though they are not confined to their beds, may use a like dispensation if they are going to say Mass or receive the Holy Eucharist.

*With Regard to Priests Placed in Special Circumstances*

(Constitution, Rules III and IV)

4) Priests who are not sick, but who are going to say Mass

a) at a late hour (that is, after nine o'clock),
b) after onerous work of the sacred ministry (for example, from early in the morning or for a long time), or
c) after a long journey (that is, at least about two kilometres walking or a proportionally longer trip in terms of the classes of vehicles used, the difficulties of the journey, and the condition of the person),

may take something in the form of drink, but not any alcoholic beverage.

5) The three cases indicated above are such as to take in all the circumstances in which the legislator intends to grant the above-mentioned faculty. Consequently every interpretation which would make these faculties seem more extensive must be avoided.

6) Priests who are in such circumstances can take something in the line of drink once or many times, but they must keep the fast for one hour before they say Mass.

7) Moreover all priests who are going to say Mass twice or three times the same day can, in the earlier Masses, consume the two ablutions prescribed by the rubrics of the Missal, but using only the water which, according to the new principle, does not break the fast.

The priest who says three Masses, one after the other, on Christmas or on All Souls Day is bound to follow the rubrics with regard to the ablutions.

8) If it should happen that a priest who is obliged to say Mass two or three times the same day should inadvertently consume wine in the ablution, he is not prevented from saying the second and the third Mass.

*With Regard to the Faithful Placed in Special Circumstances*

(Constitution, Rule V)

9) Likewise the faithful who are unable to keep the Eucharistic fast, not by reason of sickness, but because of some serious difficulty, can take something in the line of drink. They cannot, however, take any alcoholic beverage, and they must fast for an hour before the reception of Holy Communion.

10) The cases wherein there is such a serious difficulty (*grave incommodum*) are these three. It is wrong to add any others.

a) Work that weakens, started before Holy Communion. Such is the function of laborers in factories, transport and dock workers, or workers in other public utilities employed in day and night shifts; or those who, by reason of duty or of charity, must stay awake during the night (for example, nurses, night watchmen, etc.); and of pregnant women and mothers of families who must spend a long time on their household duties before they can go to Church, etc.

b) The late hour at which Holy Communion is received. There are many of the faithful who can have a priest to say Mass among them only at a late hour. There are likewise many children for whom it would be too difficult, before going to school, to go to the Church, receive Holy Communion, and then to go back home to eat breakfast.

c) A long journey which must be made in order to reach the Church. As has been explained above (n. 4), a trip is to be considered long for this purpose if it covers a walk of about a mile and a quarter, or a journey that is longer in proportion to the vehicles used, the difficulty of the journey itself, or the condition of the person making the journey.

11) The nature of such serious difficulty must be judged prudently by a confessor either while he is hearing confessions or in a private conversation with the one seeking advice. The faithful cannot receive the Holy Eucharist not fasting without the confessor's advice. The confessor can give his advice once and for all, to be effective as long as the cause of the serious difficulty remains.

### *With Reference to Evening Masses*

(Constitution, Rule VI)

By the force of the Constitution the Ordinaries of places (cf. can. 198) have the faculty of permitting the saying of evening Masses in their own territory, should circumstances render this necessary. This holds true despite the command of canon 821, § 1. The common good sometimes demands the saying of Mass after midday: for example, for the workers in some industries who work their shifts even on fast days, for those categories of workers who must be on the job during the morning hours of feast days, like dock workers, and likewise for those who have come in great numbers and from considerable distances for some religious or social celebration, etc.

12) Such Masses, however, may not be said before four o'clock in the afternoon, and may be celebrated only on the following definitely stated days. These are:

a) Holydays of obligation according to the rule of canon 1247, § 1;

b) Feasts which were formerly holydays of obligation but which now are not. These are listed in the Index published by the Sacred Congregation of the Council on Dec. 28, 1919 (*AAS*, XII, 1920, 42 f.).

c) First Fridays of the month

d) Other solemn occasions which are celebrated with great gatherings of the people

e) On one day of the week other than those enumerated above, if the good of special classes of persons should demand it.

13) Priests who say afternoon Masses, as well as the faithful who receive Holy Communion at these Masses, may, at the meal which is permitted up to three hours before the beginning of Mass or Communion, take with due moderation the alcoholic beverages which are ordinarily taken at meals (for example, wine, beer, and the like). They may not take strong liquors. Before or after this meal they may take something in the form of beverage (but no alcoholic beverage at all), up until one hour before Mass or Communion.

14) Priests may not say a morning and an evening Mass on the same day unless they have the explicit permission to say Mass twice or three times the same day, according to the rule of can. 806.

Likewise, the faithful cannot receive Holy Communion in the

morning and the evening of the same day, according to the norm of canon 857.

15) The faithful, even though they may not be of the number of those for whom the offering of an evening Mass was decreed, may freely receive Holy Communion at this Mass or immediately before it or immediately after it, if they obey the directions given above with reference to the Eucharistic fast.

16) In places where the law for the missions rather than the general law is in force, the Ordinaries may permit evening Masses on all the days of the week under the same conditions.

*Admonitions on the Observance of the Rules*

17) Ordinaries must carefully see to it that every abuse and irreverence towards the Blessed Sacrament is entirely avoided.

18) They must also take care that the new discipline be observed uniformly by all their subjects, and they must teach these subjects that all faculties and dispensations, both territorial and personal, which have hitherto been granted by the Holy See, have been revoked.

19) The interpretation of the Constitution and of this Instruction must faithfully keep to the text, and must not in any way enlarge the highly favorable faculties which have been granted. With regard to customs which may differ from the new discipline, let the abrogating clause be kept in mind: "notwithstanding any disposition whatever to the contrary, even those worthy of most special mention."

20) The Ordinaries and the priests, who ought to take advantage of these faculties granted by the Holy See, should zealously stir up the faithful to assist at Mass and receive Holy Communion frequently. They should take advantage of every opportunity, especially by preaching, to promote the spiritual good for the sake of which the Sovereign Pontiff Pius XII has published the Constitution.

The Sovereign Pontiff, approving this Instruction, decreed that it should be promulgated by publication in the Acta Apostolicae Sedis, together with the Apostolic Constitution Christus Dominus.

From the Palace of the Holy Office, on the 6th day of January, in the year 1953.

✠ Joseph Cardinal Pizzardo, *Secretary.*

L. ✠ S.

Alfredo Ottaviani, *Assessor.*

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## RESPONSE CONCERNING MARRIAGES OF MEMBERS OF ORIENTAL RITES

Eminentissime ac Reverendissime Domine:

Memor benevolentiae Vestrae, cum antea responsiones dederis pluribus dubiis, respectuose rogo ut velis etiam sequentia dubia solvere:

Joseph, Maronita, vult mulierem ducere acatholicam, sed baptizatam in secta. Joseph habitat in urbe ubi adest parochus Maronitus, et cum parocho de contrahendo matrimonio agit. Parochus alia omnia de more praeparat; sed dicit se non adfuturum esse in urbe die electo et statuto caeremoniae, ideoque litteras mittit loci parocho Latino in quibus licentiam dat ut iste Latinus matrimonium benedicat.

Parochus autem Latinus dubitat de validitate talis delegationis, et verbum facit cum Exc.mo Ordinario Dioeceseos. Exc.mus Ordinarius Latinus respondet, dicendo populum Maronitum non habere Ordinarium sibi proprium ideoque licite et valide dispensationes petere a se, Ordinario Latino. In casu, Exc.mus Ordinarius, jurisdictionem in viro Maronito exercens, delegat ad matrimonium celebrandum parochum loci Latinum; qui postea benedicit matrimonium in ritu Latino.

Nunc autem plures canonistae urgent:

1) parochum Maronitum invalide agere si conetur delegare parochum Latinum, in casu de quo supra.
2) etiam Ordinarium Latinum invalide agere si similiter conetur delegare parochum Latinum.

Cum tales casus non raro nostris in regionibus inveniantur, spero Eminentiam Vestram velle principia de validitate mihi exponere.

S. Purpuram reverenter deosculans, maneo

Eminentiae Vestrae Reverendissimae
addictissimus
Archiepiscopus NN.

Em.mo ac Rev.mo
Eugenio Cardinali Tisserant
S. C. de Ecclesia Orientali a secretis

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## SACRA CONGREGATIO
## "PRO ECCLESIA ORIENTALI"

Prot. Num. 127/49

Roma, 27 m. novembris an. 1952
Via della Conciliazione, 34

Excellentissime Domine,

epistulae tuae diei 19 m. novembris c. a. qua huic Sacrae Congregationi nonnulla subiciebas dubia necnon matrimonialem casum, haec, studiose perspecta, rescribo:

1) Ad primum: An parochus ritus antiocheni maronitarum facultatem dare possit parocho latino ut matrimonio de quo in casu assistat?

R. Parochus antiocheni maronitarum ritus cum supponatur abesse tempore celebrationis matrimonii, delegare potest quemvis sacerdotem ut matrimonio de quo in casu in Ecclesia antiocheni maronitarum ritus assistat (can. 87 § 1 n. 1 Motu Proprio "Crebrae allatae").

Insuper idem parochus delegare potest parochum paroeciae latinae eiusdem territorii, ut matrimonio de quo supra assistat in ecclesia latini ritus: quod enim facere per se potest, de consensu expresso rectoris ecclesiae latini ritus in eodem territorio existenti, facere potest per alium (Acta Apost. Sedis 4 m. augusti an. 1952).

2) Ad secundum: An Ordinarius latini ritus facultatem dare possit parocho latino ut matrimonio de quo in casu assistat?

R. Deficiente in Dioecesi NN. Hierarchia antiocheni maronitarum ritus, Ordinarius latini ritus, eodem modo ac pro latinis, facultatem dare potest Sacerdoti cuiusvis ritus ut matrimonio de quo in casu assistat (can. 86 § 3 n. 3–can. 87 § 1 n. 1 Motu Proprio "Crebrae allatae").

Delegatio parocho latino licite data est cum abfuerit, etsi ad tempus, parochus sponsi.

Occasione data, meam tibi sinceram devotionem exprimo.

/s/ ✠ Eugenius Card. Tisserant
a secretis

/s/ ✠ V. Valeri
assessore

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## NOTE ON THE COUNCILS OF INDIA

In 1950 the Archbishops and Bishops of India celebrated the First Plenary Council of India. Its *Acta et Decreta,* after being approved by the Holy See, were promulgated on October 28, 1951 (Ranchi, Catholic Press; 199 pp.). This important event has been an occasion for the Rev. Othmar F. Rink, J.C.D., Professor of Canon Law at St. John's Seminary, Nellore, South India, to begin an inquiry into the sources of particular Canon Law of the Indian sub-continent. This research is beset with great difficulties because of the extreme rarity of copies of the printed sources. Frequently the decrees of earlier provincial councils and diocesan synods cannot be obtained even from chancery offices of the respective metropolitan and episcopal sees; often only a single working copy is extant in these places. Father Rink hopes to build up, gradually, at least a collection of microfilms of the pertinent texts at his seminary library, if and when he can raise funds for the acquisition of an appropriate camera and the filming expenses.

In the meantime, the editors of THE JURIST take pleasure in making public from Fr. Rink's letters the following information concerning provincial councils and diocesan synods of India. The Oriental Churches in India are excluded from this brief survey.

### I. *The Patriarchate of Goa*

*Provincial (Patriarchal) Councils:* Before the nineteenth century five provincial councils were held in 1567, 1575, 1585, 1592, and 1606 respectively. Their *Acta* were published during the last century by J. H. Cunha Rivara in the *Archivo Portuguez Oriental* (dates not available) and reprinted in the *Bullarium Patronatus Portugalliae Regum in Ecclesiis Africae, Asiae et Oceaniae,* Appendix, vol. I (Lisbon, 1872), curante Vicecomite de Paiva Manso. The Sixth Provincial Council was held in 1894-95; its decrees were published by M. J. S. Albuquerque in the *Summario Chronologico dos Decretos Diocesanos do Arcebispado de Goa* (n.d.), pp. 171–215.

*Diocesan Synods:* (1) The Synod of Diamper, held by Archbishop Aleixo de Menezes of Goa in 1599 with the authorization of Pope Clement VIII, marks the submission of the so-called Thomas Christians of Malabar to the Catholic Church; [1] the acts of the fa-

[1] For a brief account cf. A. E. Meddlycott, in *Cath. Encycl.* XIV, 686f.

mous synod may be found in the *Bullarium* cited above (pp. 150–368) and in Mansi, XXXV, 1161–1368. (2) Synod of Goa, 1898: *Summario Chronologico* (as cited above), pp. 216–257. (3) Synod of Goa, 1905: *Colleção de Decretos Diocesanos da Archidiocece de Goa* (n.d.), pp. 245–287. It should be noted that (with the exception, of course, of Mansi) all these publications are out of print and extremely difficult to find.

II. *India outside the Patriarchate*

No printed records exist of the meetings held by the Vicars Apostolic prior to 1886, the year in which Pope Leo XIII created the Hierarchy for India. After the ordinary Hierarchy had been established, provincial councils were held in 1887 in Colombo, Bangalore (prov. Bombay), and Allabahad (prov. Agra). These may be found in the book by Msgr. Leo P. Kierkels, C.P., the Apostolic Delegate to the East Indies, *The Sixtieth Anniversary of the Catholic Hierarchy in India and Ceylon, 1886–1946.* A great number of provincial councils followed in the years 1893 and 1894; Bombay, Agra, Calcutta, Madras, Pondicherry, Verapoly, and Goa. All of them were presided over by Msgr. Zaleski, the then Apostolic Delegate, and their degrees are nearly identical. They are, however, of great importance for the particular law of the Church in India, since these decrees remained in force up to the First Plenary Council of 1950. The texts of the several provincial councils of 1893–94 are, however, difficult to obtain.[2] Diocesan statutes have been promulgated in recent years by the Ordinaries of a great many dioceses. On the other hand, The Catholic Bishops' Conference of India (C.B.C.I.) is, according to its statutes (art. 3), "a consultative body; its decisions and resolutions have by themselves no binding force on the Ordinaries or their subjects."[3]

[2] Through the kindness of the Rev. Othmar F. Rink The Catholic University of America has been able to obtain the following: *Acta et decreta concilii provincialis Bombayensis primi . . . A.D. 1893* (Bombay, 1898); *Acta et decr. conc. prov. Madraspatensis primi . . . A.D. 1894* (Trichinopolis [Tiruchirapally], 1905); *Acta et decr. conc. prov. Pudicheriensis primi . . . A.D. 1894* (Pondicherry, 1905); *Acta et decr. conc. prov. Verapolitani primi . . . A.D. 1894* (Ernakulam, 1900).

[3] The Catholic University of America has a copy of the *Statuta Archidiocesis Madraspolitanae* enacted by Archbishop L. Mathias of Madras in the Third Diocesan Synod, October 27-29, 1942. Of the First Synod of Madras (1889) photostatic copies are obtainable.

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## REPARATION DAY

The Hierarchy of the United States exhorted the faithful of this country to join, on Sunday, December 28th, in a one-day surge of prayers and "to unite in offering mortification for those who are giving their lives in defense of human rights."

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## HEROIC VIRTUE

The Sacred Congregation of Rites has accepted as established the practice of heroic virtue on the part of the following Servants of God: Father Frederick Albert, Father Anthony Chevrier, and Catherine Jorrige.

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# SECULAR

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## SPAIN ADMITTED TO UNESCO

By a vote of 44–4, with seven abstentions, Spain has been admitted as the sixty-sixth member of UNESCO. Because of this, Poland has resigned its membership and the same action is expected of Czechoslovakia and Hungary. Russia never belonged to UNESCO.

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## RELEASED TIME

The released time program in Kentucky has been declared to be constitutional by the Attorney General of that State, inasmuch as it is similar to that sanctioned in the State of New York, a program held to be constitutional by the Supreme Court of the United States in a case in which the Attorney General of Kentucky as *amicus curiae*, filed a brief supporting the validity of the statute of New York. On the contrary, the Attorney General of Kansas holds that released time programs are not legal in that State inasmuch as the statute requires a school day of six hours without time allowance for religious activities. Nevertheless in Kansas City ten thousand students are released for one and a half hours a week.

The territorial Attorney General of Hawaii has ruled that the statute of the territory permitting the release of pupils for religious instruction does not violate the United States Constitution as the Supreme Court of the United States has interpreted it. Guam also

has a program of released time based on the features of the program in the State of New York.

A released time program was unanimously adopted for high school students in Warren, Rhode Island, on the basis of replies to a questionnaire. Forty-two of the fifty-six families replying indicated that they desired such a program; all the parents expressing this wish indicated further that they would send their children to Catholic churches for instruction.

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## RELIGIOUS PRAYER MEETINGS BANNED

The Hattiesburg, Mississippi, school board has prohibited noon recess prayer meetings in junior and senior public high schools.

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## CREDITS FOR BIBLE STUDY

Fifty Dallas, Texas, churches of twelve denominations will offer Bible classes for forty class sessions. A credit and a half will be allowed to the students taking these classes. Registration fees are to be paid by the students. The teachers are to be provided by the churches subject to the approval of the school board.

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## BUS TRANSPORTATION

The Supreme Court of New Mexico has held that transportation of private school pupils in public school buses is illegal in spite of the 1951 statute authorizing it and has ruled that a county school board following the statute was in contempt of a court decision rendered prior to the enactment of the statute.

The State Board of Education of New York has ordered the Briarcliff Board of Education to provide parochial school children with bus transportation. This use of public school buses has also been authorized by the school board of Somersworth, New Hampshire. The right of the school board of Auburn, Maine, to provide this transportation for the pupils of a new parochial school was challenged by a Universalist minister, who is a member of the board. The chairman of the board's committee on transportation replied that the law without distinction provides transportation for all children of elementary schools in outlying districts.

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## COLORADO GARB QUESTION

Two nuns employed by public school district No. 43, Logan County, Colorado, were instructed under a ruling of a district judge to refrain from wearing their religious garb while teaching public school children. The judge also ordered the cessation of payment of State and County funds to the school and restrained the nuns from giving public school children religious training.

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## BACK TO MOSCOW

The law of the State of New York giving control of St. Nicholas Catholic Church in New York City to the Russian Orthodox Church in America was ruled unconstitutional by the Supreme Court of the United States. The single Justice dissenting in an eight-to-one decision was Mr. Justice Jackson who said that he did not think New York had to yield to the authority of a foreign and unfriendly State masquerading as a spiritual institution.

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## DISMISSAL OF COMMUNIST TEACHER

The Supreme Court of Pennsylvania has upheld the dismissal of a teacher in the high schools of Pittsburgh, accused of being a Communist, thus affrming the decision of the Common Pleas Court of Allegheny County. Previously the dismissal in 1950 by the Pittsburgh School Board was upheld by the State Superintendent of Instruction.

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## LIQUOR PERMITS IN OHIO

The Supreme Court of Ohio has upheld a law requiring hearings for the granting of liquor permits to applicants seeking to operate within five hundred feet of churches and schools.

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## MERCY KILLING CONDEMNED

A resolution opposing the legalization of mercy killing under any circumstances whatsoever was adopted by the fifty-sevenh triennial general convention of the Protestant Episcopal Church, meeting in Boston.

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## PLANNED PARENTHOOD REVIEW

A report sanctioning "planned parenthood" was referred to its five constituent churches for study and review by the American Lutheran Conference's biennial convention.

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## NO ROOM AT CITY HALL FOR CRIB

The Mayor and the Board of Control of Toronto refused to permit a lighted Nativity scene to be placed on the City Hall steps when requested by a committee of university students.

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## ECCLESIASTICAL RULINGS IN QUEBEC

Justice Wilfred Edge, of the Superior Court of Quebec, has declared that Quebec civil courts must admit the decisions of ecclesiastical authority in regard to the validity of marriages. This view was expressed in relation to a case involving the union of a Canadian Catholic with an unbaptized woman attempted in England in 1944 without a dispensation.

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## EDUCATION SUBSIDY IN CANADA

In only two of Canada's ten provinces do Catholics have a double tax burden in order to provide themselves with parochial schools, i.e., in Manitoba and British Columbia. Education in Canada is a matter of provincial control under the British North America Act, the basis of the Canadian confederation. In provinces which have only a public school system, the taxes of corporations are given to that system. In provinces which recognize separate schools, distribution occurs on the basis of the religion of the stockholders. It is impossible to determine this in large corporations, and the tax payments of these are given to the public school system. But the Northwest Territories Council requires corporations in Yellowknife to pay a portion to the separate schools, unless they can prove that all the shareholders are public school supporters. The portion paid separate schools is determined by the proportion of separate school supporters in the general population. Prince Edward Island, Nova Scotia and New Brunswick allow Catholics to build their own schools as part of the public school system; Catholics are then taxed for their own schools.

In Quebec there is an overall superintendent for a dual autonomous system. The Superior Council of Public Instruction has two commissions, one Catholic and the other Protestant. District commissioners are elected by the taxpayers but Protestants have the right to establish their own commission and to set up their own schools. The taxes are levied by the respective school boards, Catholic or Protestant. Citizens thus pay taxes for their own schools. The taxes are supplemented by grants from the provincial government.

In Ontario, Saskatchewan, and Alberta, Catholic and Protestant separate schools are recognized and are given grants similar to those of the public schools. Saskatchewan and Alberta exercise general control over the separate schools as to the curriculum, the textbooks, and other similar matters. In Saskatchewan the Educational Council must have two Catholics in its membership of five or more. Moreover, in that province a board may direct the public schools to open their classes with prayer. Further, religious instruction may be given during the last half hour of the day if the board desires, but it is provided that children who do not wish to remain for the instruction shall not be obliged to do so. In Ontario a Catholic tenant may direct the owner of the occupied property to pay taxes to the separate schools but usually the former is required, in virtue of a private agreement, to reimburse the owner for the higher taxes involved. Because higher taxes are required when they are earmarked for the separate schools, corporations usually direct that their taxes shall be given to the public schools, even when the exact number of Catholic shareholders is known. When the exact number is not known, the corporation's taxes are assigned to the public schools.

In Newfoundland, Catholic and Protestant schools are recognized by law. In that province Anglicans constitute 33% of the population; Catholics, 31%; the United Church, 25%; and the Salvation Army, 7%. 97% of the pupils of the province are in schools belonging to these denominations or to the Catholic Church. Grants to these schools are paid by the government on a per capita of population basis. These grants cover the costs of construction, maintenance, and equipment, as well as nearly all the salaries paid the teachers. Religious instruction is provided in all schools, but it is not compulsory.

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## VOLUNTARY SCHOOLS IN ENGLAND

The English Queen, reading the government program in Parliament, said that a bill would be introduced to make certain changes, within the framework of the Education Acts, in the law affecting voluntary schools. In this assurance some saw the equivalent of $14,000,000 relief to the Catholic community which would, however, even then be burdened with the need to find $280,000,000 within the next twenty years to retain the parochial school system.

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## WORLD CONFERENCE ON FAITH AND ORDER

The Third World Conference on Faith and Order was held in Lund, Sweden, attended by representatives of the major Protestant sects and by some Orthodox. At the Conference, the latter reminded the meeting that reunion without Rome is unthinkable.

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## CIVIL STATUS RESULTING FROM CHURCH MARRIAGE IN MEXICO

The Supreme Court of Mexico has upheld a woman's right to widow's benefits from the National Railroad on proof of a church marriage on the ground that a woman depends economically on her husband whether she is legally married to him or not. Only a civil marriage is a legal one, the Court insisted.

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## CHURCH MARRIAGE IN NICARAGUA

Nicaraguan bishops have instructed their priests to disregard even at the risk of fines and other penalties an eleven-year-old law that they say is unconstitutional and that has led to widespread concubinage and immorality. The law demands a civil marriage ceremony to take place before an ecclesiastical one and levies so high a fee on the civil rite that many among the poor cannot afford it. The fine for disobedience is usually fifty dollars. The law is said to be unconstitutional because it violates the freedom of conscience, attacks the common welfare, and shows contempt for marriage and the family.

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# Book Reviews

TRADITIO. Studies in Ancient and Medieval History, Thought and Religion. Volume VII. Fordham University Press, New York, N. Y., 1949-1951. Pp. vi-519.

A return to publication of this scholarly review is welcome. The editors and their patrons deserve the highest praise for their sacrifices in order that this review may again reach its faithful readers.

The content of this volume includes articles, miscellany and book reviews.

The articles cover a wide range of subjects. All of them, however, adhere to the general purpose of this project. The writers of these articles are all competent men, both in composition and in research.

Miscellany includes two papers of interest to canonists. One of these is on manuscripts in medieval Sweden. The author is Toni Schmid. The other is a discussion of the political theories of medieval canonists. The author is Alfons M. Stickler. This article is important for it challenges the validity of arguments proposed by Dr. Walter Ullmann in his Maitland lectures at Cambridge University. These lectures, later enlarged and published as a book, attempted to indicate the growth of absolute papal power. Stickler shows by text and by inference that many of the arguments proposed and suggested by Ullmann are too general and, at times, irrelevant. Admittedly, however, so little research has been done in this matter that opinions rather than conclusions are the best information to be had.

Book reviews are a feature of this volume of *Traditio*. There is space for just one reference. This is to the extended review of F. Dvornik's book " The Photian schism " by Frederic H. Chase. This review should be read by everyone interested in Theology, History or Law. It discusses the evidence and conclusions of Dvornik relative to Photius and his dependence on the Holy See, a position widely different from the usual view.

It is sincerely hoped there will be no future interruptions to the publication of *Traditio*.

THE LOSS OF RIGHT TO ACCUSE A MARRIAGE. By J. J. Marquardt, J.C.D. Pontificium Institutum Utriusque Iuris. Theses ad Lauream, n. 76. Catholic Book Agency, Rome, 1951. Pp. 125.

The author of this dissertation is a member of a growing and energetic community devoted to missionary work where few priests are available. The community's labors have been richly successful. Its headquarters are in Glendale, Ohio, near Cincinnati.

This dissertation is divided into two parts, historical and exegetical.

The historical section sets down the apposite Decretal of Pope Alexander III. There follows a review of canonists who accepted the principle of this Pope regarding fraud. Other canonists who extended this principle are also consulted. The author properly discards tabulation and useless repetition. He concentrates his efforts on the more important writers, notably Sanchez. The discussion of the historical development of the law of the right to accuse a marriage closes with an extended and detailed account of the instruction of Cardinal Rauscher, Archbishop of Vienna.

After some preliminary ideas regarding the accusation of a marriage, the author opens his discussion of the exegetical part of his dissertation by stating the law in respect to those who have the right to accuse a marriage. Other means which produce the same effect are studied.

The commentary on the clause of canon 1971 which is the precise subject of this dissertation considers the nature of this law from the standpoint of penalty and disqualification.

Adequate study of pre-code and current commentators is indicated. The author himself gives his own opinion and vigorously defends it against those who dissent. All this is well done. Even those who dissent from the opinion of the author will admit that he has thoroughly examined the question at issue and suggested a reasonable conclusion.

As is natural, many points cognate to this dissertation can merely be mentioned. It is a credit to the author for limiting himself to mentioning these points leaving further study and investigation to others competent in this field.

The bibliography is not divided according to the better accepted rules of Methodology. Reference works and articles are listed to-

gether. There is no index whatever. Possible future editions should eliminate typographical errors.

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LEGAL AID IN THE UNITED STATES. By Emery A. Brownell. The Lawyers Co-operative Publishing Company, Rochester, N. Y., 1951. Pp. xxiv-333. Price, $4.50.

It is obvious that if equal justice before the law is to be dispensed, some organization must operate to bring this desideratum into being and keep it in constant existence. In the United States such an organization is the Legal Aid Society or its equivalent in various cities.

The volume under review is an explanation of the different types of societies and bureaus which attempt to meet the need for legal counsel for those who because of one reason or another are unable to pay for such counsel.

This is an interesting book and should be read by all who engage in social activities whether in a professional sense or not. Bar associations and lawyers in general will be interested to know what progress has been made in legal aid and what improvements can be sought in this service.

Emphasis is made by the author on the non-competitive aspect of legal aid. This emphasis is proper for there is nothing in legal aid which should arouse suspicion or cause alarm. It is a service for the poor who otherwise would be denied their rights before the law.

Some statements of the author in regard to divorce are open to theological challenge but on the whole his philosophy in regard to law is commendable.

Charts are included which aid the reader to understand the text better. A satisfactory index is provided.

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STATES' LAWS ON RACE AND COLOR. Compiled and Edited by Pauli Murray, LL.B., LL.M. The Methodist Church Literature Headquarters, 1950, Cincinnati, Ohio. Pp. x-746. Price, $4.

The author of this book has had ample opportunity to realize the force of the laws she cites.

Miss Murray's work is a compilation of the laws, mostly of the separate States, in regard to race and color. Some local ordinances are included.

Everyone knows of the restrictive laws in regard to color but there are equally restrictive laws relative to race. Indians and aliens are under some handicaps in the United States.

This book is essentially a source-book. Nevertheless, there is an excellent introduction which is really a chapter devoted to a summary of the laws of the various States in regard to segregation, marriage, transportation, use of public conveniences, etc. Readers should digest this summary first and later, when occasion or opportunity warrants, consult the actual text of the pertinent law.

There is no doubt this book should be widely circulated. It contains material everyone ought to know. It will be useful not only for the advancement of better relations between races and between persons of different color but it will also be a handy reference to consult while studying future pertinent court decisions.

EDWARD ROELKER

THE CATHOLIC UNIVERSITY OF AMERICA

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## TV CODE RECOMMENDS FREE TIME FOR CHURCHES

The Television Code Review Board of the National Association of Radio and Television Broadcasters upheld the provision of the Television Broadcasting Code to the effect that a charge for television time to churches and religious bodies is not recommended. The Board insisted, however, that the final judgment in the matter of the sale of such time rests with the individual TV station managers and that the Code cannot prohibit it. But the Code states: "It is the responsibility of a television broadcaster to make available to the community, as part of a well-balanced program schedule, adequate opportunities for religious presentations."

# Chronicle

## GENERAL

On November 29, 1952, our Holy Father announced that he had named twenty-four new members of the College of Cardinals. Subsequently the Most Rev. Carlo Agostini, Patriarch of Venice, died and Most Rev. Valerian Gracias, Archbishop of Bombay, was named in his place.

Following is the complete list of the new Cardinals:

The Most Rev. Celso Costantini, Secretary of the Sacred Congregation for the Propagation of the Faith.

The Most Rev. Augusto Alvaro da Silva of Bahia, Brazil.

The Most Rev. Gaetano Cicognani, Papal Nuncio to Spain.

The Most Rev. Angelo Guiseppe Roncalli, Papal Nuncio to France.

The Most Rev. Valerio Valeri, Assessor of the Sacred Congregation for the Oriental Church.

The Most Rev. Pietro Ciriaci, Papal Nuncio to Portugal.

The Most Rev. Francisco Borgongini Duca, Papal Nuncio to Italy.

The Most Rev. Maurice Felton of Paris.

The Most Rev. Marcello Mimmi of Naples.

The Most Rev. Carlo Maria de la Torre of Quito, Ecuador.

The Most Rev. Aloysius Stepinac of Zagreb.

The Most Rev. Georges F. X. Maria Grente of Le Mans, France.

The Most Rev. Giuseppe Siri of Genoa.

The Most Rev. John D'Alton of Armagh, Primate of All-Ireland.

The Most Rev. James Francis A. McIntyre of Los Angeles.

The Most Rev. Giacomo Lecaro of Bologna, Italy.

The Most Rev. Stefano Wyszynski of Warsaw.

The Most Rev. Beniamino de Arriba y Castro of Tarragona, Spain.

The Most Rev. Fernando Quiroga y Palacios of Santiago de Compostella, Spain.

The Most Rev. Paul Emile Leger of Montreal.

The Most Rev. Crisanto Luque of Bogota, Colombia.

The Most Rev. Josef Wendell of Munich and Freising, Germany.

The Most Rev. Valerian Gracias, Archbishop of Bombay, India.

The Right Rev. Alfredo Ottaviani, Assessor of the Sacred Congregation of the Holy Office.

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At the November meeting of the Administrative Board of the National Catholic Welfare Conference, the following members of the Hierarchy were elected to serve the Conference for a year. Chairman of the Board: Most

Rev. Karl J. Alter, D.D., LL.D., Archbishop of Cincinnati. Vice Chairman of the Board and Chairman of the Department of Social Action: Most Rev. Patrick A. O'Boyle, D.D., Archbishop of Washington. Secretary: Most Rev. John F. Noll, D.D., Bishop of Fort Wayne. Treasurer: Most Rev. John F. O'Hara, C.S.C., D.D., Archbishop of Philadelphia. Chairman of the Youth Department: Most Rev. John J. Mitty, D.D., Archbishop of San Francisco. Chairman of the Department of Lay Organizations: Most Rev. Richard J. Cushing, D.D., LL.D., Archbishop of Boston. Chairman of the Department of Education: Most Rev. Matthew F. Brady, D.D., Bishop of Manchester. Chairman of the Legal Department: Most Rev. Emmet M. Walsh, D.D., then Coadjutor of Youngstown. Chairman of the Press Department: Most Rev. Thomas K. Gorman, D.D., D.Sc.Hist., Coadjutor Bishop of Dallas. The following were asked to serve as Assistants to the Board: Assistant to the Chairman of the Board for the N.C.W.C. Bureau of Information: Most Rev. Lawrence J. Shehan, D.D., Auxiliary of Baltimore; Assistant Secretary: Most Rev. John J. Russell, D.D., Bishop of Charleston; Assistant Treasurer: Most Rev. William D. O'Brien, D.D., Auxiliary of Chicago; Youth Department: Most Rev. Richard O. Gerow, D.D., Bishop of Natchez; Legal Department: Most Rev. Bryan J. McEntegart, D.D., LL.D., Bishop of Ogdensburg; Department of Education: Most Rev. Russell J. McVinney, D.D., Bishop of Providence; Press Department: Most Rev. Albert R. Zuroweste, D.D., Bishop of Belleville; Department of Social Action Study: Most Rev. Joseph M. Gilmore, D.D., Bishop of Helena; Department of Lay Organizations: Most Rev. Allen J. Babcock, D.D., Auxiliary of Detroit; Assistant for the Department of Social Action: Most Rev. William O. Brady, D.D., Bishop of Sioux Falls; Department of Social Action (for hospitals): Most Rev. William A. O'Connor, D.D., Bishop of Springfield, Ill.; (for charities): Most Rev. Charles Hubert LeBlond, D.D., Bishop of St. Joseph; (adviser for rural life work): Most Rev. William T. Mulloy, D.D., Bishop of Covington; (adviser for family life work): Most Rev. Peter W. Bartholome, D.D., Coadjutor of St. Cloud; (adviser for the National Conference of Catholic Prison Chaplains): Most Rev. Martin D. McNamara, D.D., Bishop of Joliet.

Rt. Rev. Howard J. Carroll, D.D., was re-elected General Secretary and Very Rev. Msgr. Paul F. Tanner, Assistant General Secretary.

New members were elected to the various committees as follows. Most Rev. Ralph L. Hayes, D.D., Bishop of Davenport, and Most Rev. Charles D. White, D.D., Bishop of Spokane, to the Committee for the North American College; Most Rev. John F. O'Hara, C.S.C., D.D., Archbishop of Philadelphia, and Most Rev. George J. Rehring, D.D., Bishop of Toledo, to the American Board of Catholic Missions; Most Rev. John J. Boardman, D.D., Auxiliary of Brooklyn, to the Committee on the Propagation of the Faith; Most Rev. Vincent S. Waters, D.D., Bishop of Raleigh, Most Rev. Hugh L. Lamb, D.D., Bishop of Greensburg, and Most Rev. Joseph M. Gilmore, D.D., Bishop of Helena, to the Committee on the Confraternity of Christian Doctrine.

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Most Rev. Francis P. Keough, D.D., Archbishop of Baltimore, Chairman of the Administrative Board of the National Catholic Welfare Conference, at the annual general meeting of the Hierarchy at The Catholic University of America read a letter from Pius XII extending "warm appreciation" for "the unfailingly generous charity of the Catholics of the United States, and that genuine understanding of the requirements of the Holy See and filial devotion to the Vicar of Christ that have always characterized them." Catholic authorities and Catholic organizations abroad have come to rely on the National Catholic Welfare Conference to a great extent for information and help, reported Archbishop Keough, especially in matters connected with the UN, and in international missions and conferences. The National Catholic Welfare Conference also gave valuable help during the year to the Church in mission areas such as the Philippines, Puerto Rico, and Tanganyika.

The need for "still further international solidarity among Catholics in publicizing and applying" Catholic teaching on international life, "particularly as manifested in the comprehensive and developing Papal peace program," is stressed in the report of the NCWC Office for United Nations Affairs. The Bishops' Committee for the Pope's Peace Plan, headed by Samuel Cardinal Stritch, Archbishop of Chicago, submitted the report. Catholic interests are directly involved in such matters as the covenant on human rights, the UNESCO education program and its plan for a "scientific and cultural history of mankind," the problem of Jerusalem and Palestine refugees, migration, and technical assistance to underdeveloped countries. The report notes considerable progress in counteracting "widespread misinterpretation of legitimate Catholic criticism of certain UN activities and trends."

"It is quite possible," said Most Rev. Thomas K. Gorman, D.D., Coadjutor of Dallas, Chairman of the NCWC Press Department, that "in the past year the Catholic press of the United States has presented to the world the timeliest, the most detailed and accurate account of persecution ever presented in history." The Catholic press "kept well ahead of its contemporaries" in reporting the "wholesale, brutal attacks upon the Church and religion in Red China and in the half-score of Iron Curtain countries." NCWC News Service now serves 502 publications with a circulation of 12,709,000. Of these publications, 138 are in the U. S. The news service has also been made available to the Catholic press in war-torn countries.

The National Council of Catholic Men, it was reported by Most Rev. Richard J. Cushing, D.D., Archbishop of Boston, Chairman of the Department of Lay Organizations, noted an increase of five new diocesan affiliations within the year: in New York, Brooklyn, Pittsburgh, Wheeling, and Steubenville. Since compilation of the report, there have been affiliations in Cincinnati, San Francisco, and Springfield-in-Illinois. The NCCM operates three nation-wide radio programs, the Catholic Hour (NBC), the Christian in Action (ABC), and Faith in Our Time (MBS). Its initial venture into network television, 20 half-hour programs on the Frontiers of Faith (NBC-TV), was viewed by an estimated 30,000,000 persons. A need was felt that the national office should be supplying its affiliates a program service for a more effective campaign of Catholic Action on a local level. The NCCM publica-

tion, *Catholic Men,* increased circulation fom 12,000 to 50,000 monthly. Total affiliations of the National Council of Catholic Women, reported Archbishop Cushing, reached a total of 7,211 in July, 1952, compared with 6,713 in July 1951. The leadership training institutes, conducted in three centers in the summer of 1951, played an important part in the sound development of the organization. The NCCW co-operated with the NCWC Education Department in finding homes for 78 German and Austrian teen-agers brought to the U. S. for a year of schooling.

The National Council of Catholic Nurses, established in 1940, grew from a membership of 3,387 in 21 sees in 15 states in 1942, to a membership of 14,680 in 71 sees in 29 states in 1952. *The Catholic Nurse,* official magazine of the organization, was launched last May, to aid in the battle against the permeation of the nursing profession by materialistic and pagan ideas.

"With the establishment of the National Council of Catholic Youth," said Most Rev. John J. Mitty, D.D., Archbishop of San Francisco, Chairman of the NCWC Youth Department, "and its unanimous acceptance by the Hierarchy, clergy, and laity throughout the U. S., one might observe that Catholic youth has reached its maturity." The National Federation of Catholic College Students now embraces the entire United States and has established close ties with *Pax Romana,* world-famous international Catholic intellectual group. The federation sponsors low-cost education tours in Europe. The Newman Club Federation is "gaining constantly in prestige." The National Catholic Camping association, established in 1951, is the newest youth association. It is estimated that there are between 300 and 400 Catholic camps in the U. S.

Members of the Social Action Staff were called upon to participate in approximately 150 formal and informal conferences sponsored by Catholic and non-Catholic organizations in the past year. Most Rev. Patrick A. O'Boyle, D.D., Archbishop of Washington, Chairman of the Social Action Department, also reported that more than 1,000 representatives of Catholic and secular organizations visited the Social Action office for information on Catholic social teaching and activities. The Family Life Bureau reported a revival of interest in family devotions and in religious practices generally in the home. Five more priests were appointed diocesan directors of family life in the year, bringing the total to 84.

The NCWC Education Department recommended that at least one class a week during the second semester of the senior high school year be devoted to pre-induction training. Experimental courses were conducted in 50 selected schools in the United States in the past year. The courses covered essential information about military life, its opportunities, its physical and moral hazards, the patriotic attitude toward military service, dangerous attitudes to be avoided, and opportunities for off-post recreation. In the two-year period 1948-50 the enrollment increase in Catholic elementary schools was 11.1 per cent compared to 6.1 in public elementary schools; and 4 per cent in Catholic secondary schools, compared to one per cent in public secondary schools. Catholic schools were urged to participate in TV educational projects. School officials were asked to co-operate with university and public school officials to obtain from philanthropic foundations and local and state government agencies funds for educational programming.

Systematic weekly instruction of Catholic pupils in public grade schools is being given in 111 dioceses, according to the report of the Confraternity of Christian Doctrine, submitted by Most Rev. Edwin V. O'Hara, D.D., Bishop of Kansas City, Mo. More than 1,600,000 children are enrolled, but there are an additional 2,000,000 to be reached. Of 1,500,000 Catholics in public high schools, only about 500,000 receive religious instruction for one or more of the four years. Priest directors of the CCD have been appointed in 23 archdioceses and 99 dioceses, and assistant directors in 22 dioceses. The Lay Committee of the National Center of the CCD, formed "to encourage laymen and women to enter the Confraternity apostolate," will hold its second annual meeting in Kansas City in April. A committee of nationally known musicians has proposed the preparation of a national hymnal. Publication of Volume I of the new translation of the Holy Bible in October will be followed by the publication of Volume II in 1954.

More than 1,000 copies of a release describing the historical aspects of diplomatic relations with the Holy See were sent to editors and Congressmen by the Bureau of Information, it was reported by Most Rev. Lawrence J. Shehan, D.D., Auxiliary of Baltimore, Assistant to the Chairman of the Board for the Bureau of Information. Secular press reaction to the annual Bishops' Statement of 1951 was cited as "the most noteworthy response" to the bureau's offer of services to newspaper associations in questions affecting Catholic interests. There was a remarkable editorial response praising the statement.

Almost half a million pamphlets were distributed by the NCWC in the past year, it was reported by the NCWC business management. The Bishops' Statement of 1951 headed the list, with 149,100 copies distributed. All available space in the NCWC headquarters building in Washington was occupied in the past year. It houses 27 departments, bureaus, and agencies, with working space for 182 employes.

An encouraging trend toward co-operation between Church and State during the past year was noted in the report of the Legal Department, by Most Rev. Emmet M. Walsh, D.D., Bishop of Youngstown. The Supreme Court, he said, in several cases involving religious questions "reaffirmed the traditional philosophy of the Church-State relationship in the U. S." The court's decision upholding the New York State released-time law repudiated the "exaggerated secularistic philosophy" of the Everson and McCollum decisions. But the court failed completely "to refer to the parental right, which was really one of the basic issues in the case."

The Immigration Bureau reported that it received requests for assistance in 3,878 cases after the U. S. displaced persons program expired. The report, submitted by Bureau Director Bruce M. Mohler, underlined the tragic refugee situation in Europe and Asia. Repeated protests were made on the national origins formula retained in the McCarran-Walter immigration law, and 29 other recommended changes were proposed, to give better status to missioners and others in religious life, teachers, students, and to strengthen family unity. Twenty-seven of these were incorporated into the law. Special legislation, it was stressed, is needed to admit additional refugees. But the new law has removed certain long-existing handicaps to persons in the service of the Church

and to furthering of family unity. The bureau carried on a tremendous activity in behalf of immigrants.

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The Hierarchy at its annual meeting set up the following Bishops' Committee for Catholic Migrants: Most Rev. Robert E. Lucey, D.D., Archbishop of San Antonio; Most Rev. John J. Mitty, D.D., Archbishop of San Francisco; Most Rev. Ralph L. Hayes, D.D., Bishop of Davenport; Most Rev. George Rehring, D.D., Bishop of Toledo; Most Rev. Stephen J. Woznicki, D.D., Bishop of Saginaw; Most Rev. Francis J. Schenk, D.D., Bishop of Crookston; Most Rev. Joseph P. Dougherty, D.D., Bishop of Yakima, and Most Rev. Leo F. Dworschak, D.D., Auxiliary Bishop of Fargo.

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His Eminence, Samuel Cardinal Stritch, explained at the annual meeting of the American Board for Catholic Missions that the Board has disbursed more than $1,543,000 during the past year, principally to carry on its special work for the Spanish-speaking Catholics of the Southwest and for Colored Missions in the South. Contributions totaled slightly more than in the previous year but emergency gifts of the board were also in a total exceeding that of the previous year.

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His Eminence; Samuel Cardinal Stritch, presided at the forty-seventh annual meeting of the Catholic Church Extension Society held in Chicago on November 17. The President, Most Rev. William D. O'Brien, D.D., Auxiliary Bishop of Chicago, reported that the Society had distributed almost two million dollars to home missions during the past year.

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Nine hundred and ninety-nine Catholic chaplains are caring for 1,147,000 persons in the military service and in addition for 1,853,000 dependents of the latter. There were three thousand eighty-five Catholic chaplains serving in 1945. There are one hundred ninety-seven additional Catholic chaplains in Veterans Administration Hospitals and five hundred six auxiliary civilian chaplains. There were eight hundred vocations in the armed forces during the past year.

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Pius XII sent his Apostolic Blessing to all the faithful in the United States in a message to the Archbishops and Bishops assembled at Washington in November for their annual meeting.

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Most Rev. Filippo Bernardini, D.D., formerly Apostolic Nuncio to Switzerland, has been named Secretary of the Sacred Congregation for the Propagation of the Faith.

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Angelo Cardinal Roncalli, Papal Nuncio to France, has been named Patriarch of Venice.

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Asaf Ali, appointed last June as India's Minister to the Vatican, has presented his credentials to our Holy Father. He is also Minister to Switzerland and Austria.

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Most Rev. Joseph F. Flannelly, D.D., Auxiliary Bishop of New York, preached at a Solemn Mass celebrated October 26th in St. Patrick's Cathedral, New York, to bring the blessings of Almighty God upon the deliberations of the United Nations.

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The Most Reverend Apostolic Delegate presided at a Pontifical Mass celebrated on Thanksgiving Day, November 27th, by Most Rev. Patrick A. O'Boyle, D.D., Archbishop of Washington, in the annual observance of Pan-American Day. Most Rev. John F. O'Hara, C.S.C., D.D., Archbishop of Philadelphia, delivered the sermon.

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His Eminence, Samuel Cardinal Stritch, presided at the eighteenth annual Solemn Red Mass celebrated October 12th in Holy Name Cathedral, Chicago.

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His Eminence, Francis Cardinal Spellman, presided at the annual Red Mass celebrated in St. Patrick's Cathedral, New York City.

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Most Rev. Patrick A. O'Boyle, D.D., Archbishop of Washington, celebrated the Pontifical Red Mass in St. Matthew's Cathedral, Washington, D. C., on February 15th. The sermon was delivered by Rev. John Courtney Murray, S.J.

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Most Rev. James J. Byrne, D.D., Auxiliary Bishop of St. Paul, celebrated the Pontifical Red Mass of the Lawyers Guild of St. Thomas More of St. Paul and Minneapolis in the chapel of St. Thomas College.

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At their annual meeting in November, the Hierarchy retained the services of architects to draw plans for the superstructure of the National Shrine of the Immaculate Conception. It is estimated that it will require a year to complete the plans.

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The Most Reverend Apostolic Delegate celebrated the Pontifical Mass in St. James Pro-Cathedral, Brooklyn, to mark the inauguration of the centenary of the Diocese of Brooklyn.

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His Eminence, Samuel Cardinal Stritch, officiated at ceremonies during the three-day celebration marking the centenary of the Cathedral of the Assumption, Louisville.

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On December 8th, the hundredth anniversary of St. Mary's Cathedral Parish, Austin, Texas, was observed with a Solemn Pontifical Mass.

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On March 1, Solemn Pontifical Masses in Ohio's six cathedrals will mark the one hundred and fiftieth anniversary of the State's admission into the Union.

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A Pontifical Mass in the Cathedral of St. Francis opened the ceremonies marking the fiftieth anniversary of the Diocese of Baker.

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Most Rev. Joseph F. Rummel, D.D., Archbishop of New Orleans, has observed the fiftieth anniversary of his ordination and the twenty-fifth anniversary of his consecration.

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On October 28, Most Rev. Thomas J. Toolen, D.D., Bishop of Mobile, celebrated a Pontifical Mass of Thanksgiving in the Cathedral of the Immaculate Conception to commemorate the silver jubilee of his consecration. His Eminence, Samuel Cardinal Stritch, presided at the Mass. The sermon was delivered by Most Rev. Fulton J. Sheen, D.D., Auxiliary of New York.

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On October 14, Most Rev. John M. McNamara, D.D., Auxiliary of Washington, celebrated a Pontifical Mass of Thanksgiving in St. Gabriel's Church to observe the fiftieth anniversary of his ordination and the twenty-fifth anniversary of his consecration. The Most Reverend Apostolic Delegate presided. The sermon was delivered by Most Rev. Patrick A. O'Boyle, D.D., Archbishop of Washington.

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Twenty-five of the three hundred or more Catholic chaplains at penal institutions in the United States and Canada formed at Atlantic City the National Catholic Prison Chaplains Association.

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November 7-9, the twenty-fifth conference of the Catholic Association for International Peace was held in Washington, D. C.

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September 10-12, the thirty-eighth annual meeting of the National Conference of Catholic Charities was held in Cleveland.

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October 17-21, the thirtieth convention of the Catholic Rural Life Conference was held in Saginaw.

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August 26-28, The Catholic Biblical Association held its meeting at St. Procopius Abbey, Lisle, Illinois.

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December 28-30, the annual meeting of the American Sociological Society was held at Marquette University.

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December 28-30, the American Catholic Historical Society held its meeting in Washington, D. C.

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January 5, the fourth annual convention of the Mariological Society of America was held in Cleveland.

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October 14-17, the National Cemetery Conference of the National Catholic Welfare Conference met in Chicago. The one hundred and twenty-five administrators present were addressed by His Eminence, Samuel Cardinal Stritch.

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November 12-19, the third National Missionary Congress was held in Monterrey.

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October 24-26, the quinquennial Congress of the Third Order of St. Francis was held in Milwaukee.

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Most Rev. David F. Cunningham, D.D., Auxiliary of Syracuse, celebrated a Pontifical Mass in Assumption Church to observe the centenary of the establishment of the Order of Friars Minor Conventual in America. The sermon was delivered by Most Rev. Walter A. Foery, D.D., Bishop of Syracuse.

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The sixth annual meeting of the Conventual Franciscans was held at St. Mary's Minor Seminary, Crystal Lake, Illinois.

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October 19-26, Catholic Youth Week was observed under the sponsorship of the Youth Department of the National Catholic Welfare Conference.

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The thirty-fifth convention of the Slovak Catholic Federation of America was held in Wilkes-Barre. It voted to distribute funds for missionary work, for the education of seminarians and for the care of the ill and needy in Slovakia when that country is liberated.

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The thirty-first triennial convention of the First Slovak Union was held in New York City.

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September 12-14, the national convention of the Knights of Lithuania was held in Dayton, Ohio.

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In September 1953 students will be accepted in the new North American College on the Janiculum Hill. The present college building will then become a residence hall for priests who are graduate students. The dedication of the new college building is planned for October 12, 1953.

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January 6-27, the First Plenary Council of the Philippines was held.

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January 11-18, twenty delegates from the United States attended the first Latin-American Congress on Rural Life held in Manizales, Colombia.

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September 7 was the date on which was read from all pulpits the joint pastoral of the eighty-sixth annual meeting of the German Hierarchy at Fulda.

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An International Bureau of Catholic Education was set up in Lucerne, Switzerland, at a meeting of Catholic educators from various countries. The purpose of the Bureau is to defend on the international level the rights of parents and of the Church in education.

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September 11, in Vienna, the first Austrian Catholic Day was observed since 1933. The theme was "Freedom and the Dignity of Man."

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November 16, Most Rev. James A. McFadden, D.D., Bishop of Youngstown, died. His Eminence, Edward Cardinal Mooney, presided at the Pontifical funeral Mass. The sermon was delivered by Most Rev. Karl J. Alter, D.D., Archbishop of Cincinnati.

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Most Rev. Emmanuel B. Ledvina, D.D., formerly Bishop of Corpus Christi, was buried on December 19, from the Cathedral in Corpus Christi. The Pontifical funeral Mass was celebrated by Most Rev. Robert E. Lucey, D.D., Archbishop of San Antonio. The sermon was delivered by Most Rev. William D. O'Brien, D.D., Auxiliary of Chicago.

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October 10, Most Rev. Gabriel M. Reyes, D.D., Archbishop of Manila, died in Washington, D. C. The Pontifical funeral Mass was celebrated in St. Matthew's Cathedral, Washington, D. C., by the Most Reverend Apostolic Delegate.

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September 5, Rt. Rev. Enrico Pucci, former News Correspondent in Rome for the News Service of the National Catholic Welfare Conference, died. Last year he celebrated the golden jubilee of his ordination.

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## DIGNITIES

January 15, Most Reverend Thomas A. Boland, D.D., was installed by the Most Reverend Apostolic Delegate as Archbishop of Newark.

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December 11, Most Rev. Edward J. Hunkeler, D.D., was installed as Archbishop of Kansas City, Kansas, in St. Peter's Cathedral by the Most Reverend Apostolic Delegate, who celebrated the Pontifical Mass on the occasion. The

sermon was preached by Most Rev. Joseph E. Ritter, D.D., Archbishop of St. Louis.

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February 11, Most Rev. Celestine Damiano, D.D., Titular Archbishop of Nicopolis in Epiro and Apostolic Delegate to South Africa, was consecrated in Buffalo.

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Most Rev. Martin J. O'Connor, D.D., Rector of the North American College, Rome, was named Assistant at the Pontifical Throne to mark the tenth anniversary (January 27) of his consecration.

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September 24, Most Rev. Leo R. Smith, D.D., Titular Bishop of Marida and Auxiliary of Buffalo, and Most Rev. James R. Navagh, D.D., Titular Bishop of Ombi and Auxiliary of Raleigh, were consecrated by the Most Reverend Apostolic Delegate in the Cathedral at Buffalo. The co-consecrators were Most Rev. Raymond A. Kearney, D.D., Auxiliary of Brooklyn, and Most Rev. James H. Griffiths, D.D., Auxiliary of the Military Ordinariate.

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October 15, Most Rev. Joseph H. Hodges, D.D., Titular Bishop of Rusadus and Auxiliary of Richmond, was consecrated by Most Rev. Peter L. Ireton, D.D., Bishop of Richmond, in the Cathedral at Richmond. The co-consecrators were Most Rev. Vincent S. Waters, D.D., Bishop of Raleigh, and Most Rev. John F. Dearden, D.D., Bishop of Pittsburgh. The sermon was delivered by Most Rev. John J. Wright, D.D., Bishop of Worcester.

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March 19, the Most Rev. John F. Hackett, D.D., Titular Bishop of Helenopolis in Palestina and Auxiliary of Hartford, will be consecrated in St. Joseph's Cathedral by Most Rev. Henry J. O'Brien, D.D., Bishop of Hartford. The co-consecrators will be Most Rev. Francis P. Keough, D.D., Archbishop of Baltimore, and Most Rev. Matthew F. Brady, D.D., Bishop of Manchester. The sermon will be preached by Most Rev. Richard J. Cushing, D.D., Archbishop of Boston.

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Most Rev. Thomas J. Danehy, M.M., D.D., Administrator of the Vicariate Apostolic of Pando, Bolivia, has been named Titular Bishop of Bita.

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Rt. Rev. Vincent J. Daly, O.C.S.O., D.D., has been elected Abbot of New Melleray Monastery, Dubuque.

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Rev. Thomas F. Maloney is the first American-born Rector of the American College, Louvain, which reopened last year after being closed since 1940.

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Very Rev. Benedict M. Blank, O.P., has been named the first American Rector of the Angelicum.

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Very Rev. Robert F. Ellicott, C.SS.R., is the first Provincial of the Redemptorists' new province of Oakland.

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Very Rev. Raymond J. Hunt, O.M.I., has been named Provincial of the American Province of the Oblates of Mary Immaculate.

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Rev. Edward Bernard Bunn, S.J., has been named President of Georgetown University.

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The following have been named Protonotaries Apostolic: Rt. Rev. Msgrs. Leo G. Fink, Fenton J. Fitzpatrick, and Thomas F. McNally, of the Archdiocese of Philadelphia; R. Marcellus Wagner, V.G., of the Archdiocese of Cincinnati; Dorrance V. Foley, of the Archdiocese of Dubuque; Philip Cullen, Thomas Cullen, and J. R. O'Donoghue, of the Diocese of Mobile.

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The following have been named Domestic Prelates: Rt. Rev. Msgrs. Joseph A. Gorham, Joseph P. O'Donnell, and Edward M. Reilly, of the Archdiocese of Philadelphia; John J. Coady, Walter J. Hayes, Joseph M. Moran, and E. Jerome Winter, of the Archdiocese of Washington; John J. Brinker, John E. Kuhn, and Edward C. Lehman, of the Archdiocese of Cincinnati.

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The following have been named Papal Chamberlains: Very Rev. Msgrs. E. Robert Arthur, Philip M. Hannan, and Russell A. Phelan, of the Archdiocese of Washington.

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Rev. Emmanuel Doronzo, O.M.I., S.T.D., has received the annual Cardinal Spellman Award for outstanding achievement in the field of Sacred Theology.

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The Medal *Pro Ecclesia et Pontifice* has been conferred on Mrs. Vivi E. O'Toole, of San Diego, and Mrs. Catherine Jacobs Bartholome, mother of Most Rev. Peter W. Bartholome, D.D., Coadjutor of St. Cloud.

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The Papal *Benemerenti* Medal has been conferred on Leo F. Stock, Ph.D., of the Archdiocese of Washington.

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Francois Mauriac was the 1952 recipient of the Nobel Prize for Literature.

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Hon. John W. McCormack received the annual Peace Medal of the Third Order of St. Francis at its quinquennial Congress in Milwaukee.

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Dr. Victor Andres Belaunde, Ambassador of Peru, received the Serra Award of the Academy of American Franciscan History.

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The Catholic Action Medal was conferred on James M. O'Neill by Most Rev. Joseph A. Burke, D.D., Bishop of Buffalo.

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The 1952 James J. Hoey Awards for outstanding contributions to the cause of Interracial Justice were conferred on Charles F. Vatterott, Jr., of St. Louis, Past President of the Catholic Interracial Council of St. Louis, and Joseph J. Yancey, New York, founder and director of the Pioneer Athletic Club of New York.

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Howard W. Fitzpatrick, of Malden, Massachusetts, received the St. Vincent de Paul Medal from St. John's University, Brooklyn, in recognition of his contributions to the cause of Catholic charities.

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Mrs. Alphonse J. Gehring, of Chicago, received the Martha Medal from the Catholic Church Extension Society.

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Hugh S. Taylor, Dean of the Graduate School, Princeton University, was elected President of the International Movement for Intellectual and Cultural Affairs, and Rosaire Beaule, of the University of Montreal, was elected President of the International Movement of Catholic Students.

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## THE CANON LAW SOCIETY OF AMERICA ANNUAL NATIONAL MEETING

On Wednesday and Thursday, November 12-13, 1952, The Canon Law Society of America convened for its fourteenth annual meeting, held at the Hotel Jefferson, Saint Louis, Mo.

### Opening Meeting

Upon an expression of warm welcome in the name of the Archbishop, the Most Rev. Joseph E. Ritter, the President of the Society, the Very Rev. Msgr. Anthony A. Esswein, introduced the Rev. Joseph E. Michalski, Vice-Chancellor of the Archdiocese of Saint Louis, for his presentation of a "Commentary on the New Lenten Regulations." There was explored the work of the Bishops' Committee, which at the annual meeting of the hierarchy in Washington, D. C., November 14-16, 1951, submitted for approval a set of regulations that might serve as a uniform rule throughout the country in matters touching the laws of fast and of abstinence. The submitted regulations underwent some very minor changes before their almost universal adoption by the bishops throughout the country when these issued their Lenten Instructions in 1952. The paper given by Father Michalski offered a rich commentary, which further stimulated discussion from the floor. The treatment together with the discussion helped to consolidate a substantially uniform understanding of the regulations now current in whatever relates to fast and abstinence.

### Business Meeting

This session convened at 5:00 P.M. When the President had reported on the Society's general activity during the past year, he called on Father Alfred R. Julien, J.C.D., as representing the Committee on the Formation of Regional Conferences, to offer his report. The report pointed to the various conferences established and actively functioning throughout the country, and indicated the approximate number of members associated with each of the various conferences. In the absence of the members constituting the Research Committee no report was submitted. The report of the Membership Committee was merged with the report by the Treasurer.

### Report of the Treasurer

The Society's financial report for the fiscal year 1952 (October 1, 1951, to September 30, 1952) was furnished by the Rev. Clement Bastnagel, Treasurer of the Society. Total income had been $4,751.69, and total expenditures had amounted to $3,266.99. The gain of $1,484.70 was augmented by means of accrued interest ($318.81) to reach the sum of $1,803.51.

On October 1, 1951, the Society's assets amounted to $12,367.09. The additional sum of $1,803.51 brought the assets to $14,170.60 on October 1, 1952.

Up to the present the Society had distributed 180 dissertations in approximately 45,700 copies, with 5 dissertations in 1300 copies distributed during the fiscal year 1952. Still awaiting publication were 33 dissertations with 9,075 copies to be purchased for distribution among the members of the Society. These dissertations bear the following numbers in the Catholic University of America Series of Canon Law Studies: Nos. 189, 201, 203, 207, 230, 233, 244, 246, 267, 271, 277, 279, 289, 303, 304, 307, 309, 318, 319, 321, 322, 324, 325, 326, 327, 328, 329, 330, 331, 333, 334, 335 and 336. (No. 325 [300 copies] has since appeared, so that 32 disserations [8,775 copies] are now still to come off the press.)

The active membership (515) in the Society stood augmented by 68 through active subscribers from the hierarchy.

In the five previous years the Society had annually set aside a sum of $300.00 as a Book Purchase Fund for the Canon Law Library at The Catholic University of America. Upon the Treasurer's recommendation a sum of $500.00 was made available for the same purpose during the current year.

### Election of Officers

In line with the Society's tradition of looking to new territory in which the holding of the annual national meeting may bring the work and the purpose of the Society to the attention of prospective members, the slate of nominations looked to Portland, Oregon, to Omaha, Nebraska, and to Boston, Massachusetts, as centers in which the newly elected officers of the Society could hope to see this aim achieved. Omaha was selected, with the following officers: the Very Rev. Daniel E. Sheehan, J.C.D., of Omaha, as President; the Rt. Rev. Thomas M. Kealy, J.C.D., of Lincoln, Nebraska, as Vice-President; the Rev. Francis Korth, S.J., of St. Mary's College, Kansas, as Recording Secretary. The Rev. Clement Bastnagel, J.U.D., of The Catholic

University of America, was designated to continue in the position of General Secretary-Treasurer. Inasmuch as neither the newly elected President nor the newly elected Vice-President was in attendance at the meeting, the outgoing President continued to preside at the session. The ultimate business of the session looked to the possible modification of the Society's constitution through an amendment that would call for the appointment of a standing committee of three members, to be chosen by the President, for the purpose of arranging for convention cities and nominations for office. Of the three members appointed to this committee, one of the members was to be supplanted each successive year by a new member. The suggested amendment proved acceptable to the assembly in the vote that was taken with reference to its adoption.

### Evening Session

For the evening session at 8:30 o'clock the past year's Vice-President, the Very Rev. Joseph B. Stenger, J.C.D., presided. At this session there was a reading of a number of Roman Responses and Decrees that had been issued to various chanceries in this country throughout the past year. The reading occasioned further discussion, and the reports that could be furnished by the officials of the various chanceries helped to clarify the points under treatment. It was a quite general feeling that the session proved very practical with regard to many administrative matters in chancery work.

### Morning Sessions

On Thursday morning, November 13, 1952, sessions were held at 9:30 and at 11:00 o'clock. In the earlier session the Very Rev. J. Norbert Kelly, *Officialis* of the Tribunal of Albany, N.Y., presented a highly interesting paper on "The *Cautiones* in the Light of Recent Rota Decisions." It was shown that within most recent times the Roman Rota in three matrimonial causes (one from Albany and two from Brooklyn) adopted the contention that the guarantees given by parties who contemplate a mixed marriage must be genuine and sincere before they can serve for a valid dispensation from the impediment either of mixed religion or of disparity of worship. Accordingly, with reference to the diriment impediment of disparity of worship, an invalidly granted dispensation would also involve an invalidly contracted union. The paper appears in full elsewhere in the present issue of The Jurist.

The second session, of specific interest to those who were in attendance from the various religious communities represented at the meeting, dealt with "Practical Aspects of the Law Regarding Religious Poverty." The Rev. Innocent Swoboda, O.F.M., J.C.D., Secretary to the Franciscan Provincial resident in St. Louis, ably led the discussion. The exploration of additional related matters in open discussion from the floor helped to round out and integrate the topic under review.

### Final Session

Mr. Bernard J. Huger, Attorney for the Archdiocese of St. Louis, indicated and stressed the importance of a close collaboration between canonists and Catholic lawyers as members of the law profession in view of the many

ecclesiastical problems that call for a solution in the light of the civil law. He suggested that through the Legal Department of the NCWC many an exchange of necessary knowledge on the part of lawyers can be effected, so that the individual attorneys will frequently be saved the need of re-assembling relevant data and pertinent facts, inasmuch as these have been made available through research elsewhere in similar cases. He further advised that in all matters of ecclesiastical discipline which likewise touch civil law interests it would prove most beneficial to consult civil law experts regarding all possible or likely repercussions from the civil law. In consequence of such mutual co-operativeness between ecclesiastical jurists and civil lawyers the Church can hope for a more equitable attention on the part of the State to whatever demands still call for a better adjustment.

The several appointments and selections of personnel for the various committees had to await the action of the newly elected President, the Very Rev. Daniel E. Sheehan, J.C.D., Chancellor of the Archdiocese of Omaha. In line with Article X of the Society's constitution the appointing of the standing committees can feasibly be undertaken by the President at any time within thirty days after the annual election.

## NORTHWEST REGIONAL MEETING

The tenth annual meeting of the Northwest Conference of The Canon Law Society of America was held at Mount Angel Abbey, St. Benedict, Oregon, on Tuesday and Wednesday, September 16 and 17, 1952. Chairman for the meeting was the Very Rev. Thomas J. Tobin, Vicar General of the Archdiocese of Portland.

Others in attendance were, from the Archdiocese of Portland, Rt. Rev. Abbot Thomas Meier, O.S.B., Rt. Rev. Coadjutor Abbot Damian Jentges, O.S.B., Very Rev. Edmund J. Murnane, and Revs. Edmund G. Van der Zanden, Albert J. Carmody, John R. Laidlaw, Martin Thielen, Pius Aleksa, Ambrose Zenner, O.S.B., Matthias Burger, O.S.B., and Thomas Brockhaus, O.S.B.; from the Archdiocese of Seattle, Rt. Rev. Msgr. Francis E. Hagedorn and Rev. Howard D. Lavelle; from the Archdiocese of Vancouver, Rev. John Hanrahan and Rev. Nunzio J. Defoe; from the Diocese of Victoria, Rev. A. J. McDonald; from the Diocese of Yakima, Rev. Paul A. Stecher; from the Diocese of Spokane, Rev. Erwin L. Sadlowski; from the Diocese of Boise, Rev. Raymond J. Peplinski, and from the Diocese of Helena, Rev. John A. Delane.

By way of innovation, a layman was invited and attended the second day's session. This was Mr. Leo Smith, an attorney from Portland.

The first session, on Tuesday morning, September 16, was opened with prayer and words of welcome by Rt. Rev. Abbot Damian Jentges, O.S.B., who was host to the gathering. Then followed a paper prepared and read by Rev. Paul A. Stecher, of Yakima, titled "The Relation of the Parish Priest to His Parishioners as Members of Church-approved Societies."

Father Stecher outlined the provisions of the Code defining the position of the pastor and regulating his dealings with his parishioners both as individuals and as members of the different kinds of lay and ecclesiastical organizations. The burden of the discussion that followed was to apply the principles of the Code regarding societies to Catholic Action groups existing or to be established in parishes.

At noon, those attending the meeting had lunch with the monks in the Abbey refectory.

At the afternoon session, Rev. Howard D. Lavelle, of Seattle, read a paper on "The Relations of the Bishop to His Subjects as Members of Church-approved Societies," again outlining the provisions of the Code for the erection, government and suppression of ecclesiastical societies as distingushed from lay societies. The discussion again turned upon the problems posed by Catholic Action groups in a diocese. A distinction was made between a Bishop's erecting a group of lay people into an ecclesiastical society by formal decree, and his giving a mandate to a group of lay people to perform a work of the apostolate. Another point made clear was that a priest appointed as moderator of a Catholic Action group enjoys a delegation of episcopal jurisdiction wholly different and apart from the powers assigned to a priest as chaplain or moderator of an ecclesiastical or lay society in a parish. The discussion also clarified further the position of lay members of Catholic Action groups and specialized movements as members or non-members of Church-approved societies, and as related to the position of other parish organizations and their members.

On Wednesday morning, September 17, Rev. Thomas Brockhaus, O.S.B., of Mount Angel Abbey, presented a paper on "The Position of the American Hierarchy on the Problem of Separation of Church and State." After explaining the differences between the positions held by Jacques Maritain in his book *Man and the State* and that propounded by Rev. Lawrence R. Sotillo, S.J., in his work *Compendium Iuris Publici Ecclesiastici*, to illustrate the wide variety of views currently held by Catholic scholars on the question, and indicating the relative positions of other writers in the present controversy, Father Brockhaus gave a summary first of the November 21, 1948, statement of the United States Hierarchy on "The Christian in Action," and then of Pope Leo XIII's encyclical letter of November 1, 1885, on "The Christian Constitution of States." In the discussion that followed, a comparison was drawn between the policy declared by Monsignor John A. Ryan, of refusing State aid to Catholic schools in order to keep out State interference from Christian education, and the later position of the National Catholic Educational Association, seeking certain forms of State support for Church schools. Father A. J. McDonald gave a very interesting report on the origin and activities of the British Columbia Catholic Educational Association, which is composed of Catholic laymen working for State assistance for Church schools.

After lunch in the Abbey refectory, the afternoon session was devoted first to a discussion of the past year's canonical decisions from Rome, then to recent canonical literature, and finally to the annual business meeting.

At the business meeting, a unanimous resolution expressed the Northwest Conference's sorrow and loss at the death of Rt. Rev. Msgr. Hubert Louis Motry, Dean of the School of Canon Law at The Catholic University of America and founder of The Canon Law Society of America.

Mr. Leo Smith explained how, at Father Thomas J. Tobin's request, he prepared two bills that were passed at the last Oregon State legislature, the one providing the same advantage for separate maintenance as for a decree of divorce, and the other providing for Oregon's refusal to acknowledge a divorce decree granted in another State in cases in which the defendant was not served with a personal summons. This was in implementation of a resolution passed at the 1949 meeting of the Northwest Conference, held at Great Falls, Montana, where the subject discussed was "Divorce."

Most Rev. Bishop Joseph M. Gilmore's invitation to hold the 1953 meeting of the Northwest Conference at Carroll College, Helena, Montana, was accepted. Most Rev. Bishop Edward J. Kelly's invitation to meet at Boise was accepted for 1954.

Rev. John A. Delane, pastor of St. Mary's church, Helena, Montana, was elected president for the coming year. The discussion of a standard form of petition to request the local Ordinary's permission for the separation of spouses and for entering legal suit for separate maintenance or divorce, was suggested as the topic for next year's meeting.

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## THE RICCOBONO SEMINAR OF ROMAN LAW IN AMERICA

Date: October 28, 1952.

Speaker: Stephan G. Kuttner, J.U.D., Professor of the History of Canon Law, The Catholic University of America.

Paper: "Pope Honorius III and the Study of Roman Law".

Date: December 12, 1952.

Speaker: Dr. K. Grzybowski, Dr.Iur., S.J.D., formerly Associate Professor at the University of Lwow, Poland; now assistant editor, Mid-European Law Project, Library of Congress.

Paper: "From Contract to Status".